



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

- 441 IAC 79 (Chapter)
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The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
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May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
2	Friday, July 2, 2004	July 21, 2004
3	Friday, July 16, 2004	August 4, 2004
4	Friday, July 30, 2004	August 18, 2004

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

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The Administrative Rules Review Committee will hold a special meeting on Thursday, July 8, 2004, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

- Printing; procurement of goods and services, rescind 401—ch 5, 471—ch 13; adopt 11—ch 102; amend 11—105.1, 105.2, 105.3(1), 105.3(2), 105.4, 105.4(3)“b,” 105.4(4)“b,” 105.4(5), 105.5(1), 105.7(3), 105.7(5), 105.8(4)“a,” 105.8(5)“b,” 105.8(7), 105.8(7)“i,” 105.10, 105.11(2)“b,” 105.12, 105.12(6), 105.13, 105.14, 105.15(1), 105.15(2), 105.15(5), 105.16, 105.19(5), Notice **ARC 3415B** 6/9/04
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- Reading endorsements, 14.141(16), Filed **ARC 3417B** 6/9/04
- Career and technical endorsements and licenses, ch 16 title, 16.1 to 16.12, Filed **ARC 3419B** 6/9/04

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- AEA media centers, rescind ch 70, Filed **ARC 3384B** 6/9/04
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- Financial incentives for national board certification, 84.2, 84.4“3,” 84.5, Filed **ARC 3436B** 6/23/04

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- Landfarming of petroleum contaminated soil; land application of wastes, ch 120, 121.1 to 121.6, 121.6(2), 121.6(3), 121.7, Notice **ARC 3397B** 6/9/04
- Waste tire management—county grant program, regents tire-derived fuel program, end-user incentive program, rescind chs 215 to 217, Notice **ARC 3409B** 6/9/04

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- Mooring of vessels on riparian property of the state of Iowa,
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- Motorboat noise levels, 43.1, 43.2, Filed Emergency After Notice ARC 3401B 6/9/04
- Daily deadline for removing decoys from game management areas,
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- Protection for private landowners that implement conservation measures for endangered and threatened species, 77.4(9) Filed **ARC 3403B** 6/9/04
- Wild turkey fall hunting—increased quotas of combination shotgun-or-archery licenses, 99.5(1), Filed **ARC 3404B** 6/9/04

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- Organization; administrative procedures; public communications and records; victim notification; parole and work release—considerations, supervision; parole revocation; parole discharge; executive clemency; appeals; waivers, chs 1 to 8, 10, 11, 13 to 16, Filed **ARC 3444B** 6/23/04

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- Social work examiners, 280.9(2), 280.9(2)"a" and "e," 281.5, Notice **ARC 3382B** 6/9/04

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- Admission fees, 1.1, 1.2, 2.27(1), 2.27(6), Filed **ARC 3433B** 6/23/04

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INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

- Appointment of counsel; claims for services, 7.1, 11.5(2), 11.5(6), 11.5(7), 11.7, 12.1(1), 12.1(2), 12.2(1)"a," 12.2(1)"b"(2), 12.2(1)"e"(1), 12.2(1)"f," 12.2(2), 12.2(3), 12.2(6), 12.2(9) to 12.2(12), 12.3(1), 12.3(3), 12.4(4), 12.5, 12.5(3), 12.5(4), 12.6, 12.7(1), 12.7(3), 12.8(1), 12.8(1)"h" and "i," 12.9(1), 12.9(1)"a," 12.9(2)"a," "d" and "f," 12.9(3), 12.10, adopt ch 13, Notice **ARC 3442B**, also Filed Emergency **ARC 3443B** 6/23/04

TRANSPORTATION DEPARTMENT[761]

- School transportation services provided by regional transit systems, 911.1(2), 911.5, 911.6(1), 911.6(6), 911.8(1), Filed **ARC 3430B** 6/23/04

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Consumer services, 19.4(10), 19.4(13)"e," 19.4(15)"d" and "f," 19.4(16)"h," 20.4(11), 20.4(14)"f," 20.4(15)"d" and "f," 20.4(16)"h," Notice **ARC 3411B** 6/9/04
- Purchased gas adjustment and reserve margin, 19.10(1) to 19.10(4), 19.10(6) to 19.10(8), 19.16, Notice **ARC 3410B** 6/9/04
- Eligible telecommunications carrier designation for wireless carriers, 39.2(5)"c," Filed **ARC 3441B** 6/23/04

VOTER REGISTRATION COMMISSION[821]

Application for registration, ch 2 title, 2.1, 2.1(2), 2.8(2), 2.8(4) to 2.8(7), 2.9, 2.11, 2.14, 2.15, 5.1(1), 8.2, 8.2“2,” 8.4, 8.5, 10.1(1), 11.7, Notice **ARC 3428B** 6/9/04

WORKERS’ COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”
Electronic data interchange—required reports, 11.7, Filed **ARC 3396B** 6/9/04

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR’S NOTE: Terms ending April 30, 2007.

Senator Michael Connolly
3458 Daniels Street
Dubuque, Iowa 52002

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator Mary Lundby
P.O. Box 648
Marion, Iowa 52302-0648

Senator Paul McKinley
21884 483rd Lane
Chariton, Iowa 50049

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Representative George Eichhorn
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Stratford, Iowa 50249

Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative Geri Huser
213 Seventh Street NW
Altoona, Iowa 50009

Brian Gentry
Administrative Rules Coordinator
Governor’s Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ADMINISTRATIVE SERVICES DEPARTMENT[11]

State printing; procurement of goods and services, adopt 11—ch 102; amend 11—ch 105; rescind 401—ch 5 and 471—ch 13 IAB 6/9/04 ARC 3415B	Conference Room 04 Level A—South Hoover State Office Bldg. Des Moines, Iowa	June 29, 2004 11 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Organic materials composting facilities, 105.5(1), 105.8(2), 105.10, 105.15 IAB 6/9/04 ARC 3408B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 14, 2004 10:30 a.m.
Landfarming of petroleum contaminated soil; land application of wastes, rescind and adopt new ch 120; 121.1 to 121.7 IAB 6/9/04 ARC 3397B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 21, 2004 10 a.m.
Waste tire-related programs, rescind chs 215 to 217 IAB 6/9/04 ARC 3409B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 29, 2004 10 a.m.

HISTORICAL DIVISION[223]

Public records and fair information practices, 3.1 to 3.17 IAB 6/9/04 ARC 3423B	Tone Board Room, Third Floor West State Historical Bldg. 600 E. Locust St. Des Moines, Iowa	June 29, 2004 10 to 11 a.m.
Library and archives policies and services, amendments to ch 22 IAB 6/9/04 ARC 3424B	Tone Board Room, Third Floor West State Historical Bldg. 600 E. Locust St. Des Moines, Iowa	June 29, 2004 10 to 11 a.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

E911 surcharge, 10.8 IAB 6/9/04 ARC 3390B (See also ARC 3391B)	Division Conference Room Hoover State Office Bldg. Des Moines, Iowa	June 29, 2004 1 p.m.
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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Contribution rates for sheriffs and deputy sheriffs; airport firefighters moved to protection occupation class, 495—4.6; 581—21.8, 21.13(10) IAB 6/23/04 ARC 3445B (See also ARC 3446B herein)	7401 Register Dr. Des Moines, Iowa	July 13, 2004 9 a.m.
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LABOR SERVICES DIVISION[875]

Record-keeping regulations; general industry safety and health, 4.3, 10.20 IAB 6/9/04 ARC 3429B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 29, 2004 10 a.m.
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LAW ENFORCEMENT ACADEMY[501]

Law enforcement officers working at ILEA, 1.1, 2.3 IAB 6/9/04 ARC 3393B	Conference Room Law Enforcement Academy Camp Dodge Johnston, Iowa	June 30, 2004 10 a.m.
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MEDICAL EXAMINERS BOARD[653]

Fingerprint packet and fee required for licensure, 8.4, 9.5, 9.6(3), 9.7, 9.13(2), 10.3(3), 10.4(3), 10.5(1), 12.4(37) IAB 6/9/04 ARC 3420B	Suite C 400 SW Eighth St. Des Moines, Iowa	June 30, 2004 2 p.m.
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NATURAL RESOURCE COMMISSION[571]

Forms required by department for recreational vehicles and vessels, 20.5(2), amendments to ch 38, 39.4, 46.1, 47.1, 50.1, 50.2, 50.5 to 50.7, 50.10 to 50.13 IAB 6/9/04 ARC 3398B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 30, 2004 1 p.m.
“No anchoring” areas on Lake Red Rock, 40.6(3) IAB 6/9/04 ARC 3407B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 1, 2004 8 a.m.

PHARMACY EXAMINERS BOARD[657]

Fee increases, 2.3, 2.6, 2.9, 2.11, 2.14, 3.10, 3.11, 8.35, 10.3, 12.7, 17.3 IAB 6/9/04 ARC 3416B	Central Conference Room Suite E 400 SW Eighth St. Des Moines, Iowa	June 29, 2004 11 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

License renewal, audit of continuing education reports, 280.9, 281.5 IAB 6/9/04 ARC 3382B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 29, 2004 9 to 10 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Birth defects institute, amendments to ch 4 IAB 6/9/04 ARC 3412B (ICN Network)	ICN Conference Room Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	June 29, 2004 10 to 11 a.m.
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PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

NIACC 500 College Dr. Mason City, Iowa	June 29, 2004 10 to 11 a.m.
Educational Services Ctr. Administration 12 Scott St. Council Bluffs, Iowa	June 29, 2004 10 to 11 a.m.
VA Hospital Highway 6 West Iowa City, Iowa (Attendees may park at UIH parking ramp)	June 29, 2004 10 to 11 a.m.
Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	June 29, 2004 10 to 11 a.m.
Morningside College 1501 Morningside Ave. Sioux City, Iowa	June 29, 2004 10 to 11 a.m.

STATE PUBLIC DEFENDER[493]

Claims, amend 7.1, 11.5, 11.7, 12.1 to 12.10; adopt ch 13 IAB 6/23/04 ARC 3442B (See ARC 3443B herein)	Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	July 13, 2004 9 a.m.
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UTILITIES DIVISION[199]

Revisions to customer service rules, 19.4, 20.4 IAB 6/9/04 ARC 3411B	Hearing Room 350 Maple St. Des Moines, Iowa	July 16, 2004 9 a.m.
Revisions to purchased gas adjustment and reserve margin rules, 19.10, 19.16 IAB 6/9/04 ARC 3410B	Hearing Room 350 Maple St. Des Moines, Iowa	July 6, 2004 9 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 3431B

COLLEGE STUDENT AID
COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 12, “Iowa Tuition Grant Program,” Iowa Administrative Code.

The proposed amendments modify the requirements colleges and universities must meet to be eligible to participate in the Tuition Grant Program as mandated by the Iowa General Assembly. Specifically, the changes require participating colleges and universities to be accredited by the North Central Association of Colleges and Schools (NCA), be tax exempt under Section 501(c)(3) of the Internal Revenue Code (or have been eligible to participate during the 2003-04 academic year), and provide matching institutional funds as specified by Iowa law.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 13, 2004, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)242-3344.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapter 261.

The following amendments are proposed.

Amend **283—Chapter 12** as follows:

CHAPTER 12

IOWA TUITION GRANT PROGRAM

283—12.1(261) Tuition grant based on financial need to Iowa residents enrolled at eligible private institutions of postsecondary education in Iowa.

12.1(1) to 12.1(4) No change.

12.1(5) Award notification. A grant recipient is notified of the award by the college or university to which application is made. *Each award notification must clearly indicate award amounts, the state programs from which funding will be received, and that funding is contingent upon the availability of state funds.* Any award notification provided by a ~~candidate college or university or~~ a college or university on probation with the accrediting agency must be made contingent upon the college’s or university’s maintaining affiliation with the accrediting agency. The college or university is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The college or university reports changes in student eligibility to the commission.

12.1(6) and 12.1(7) No change.

283—12.2(261) Tuition grant institutional eligibility requirements.

12.2(1) ~~Methods of gaining institutional~~ *Institutional* eligibility under Iowa Code section 261.9. An Iowa college or university requesting participation in the Iowa tuition grant

program must apply to the college student aid commission using the commission’s designated application.

~~The applicant college or university seeking to participate~~ *A college or university participating in the Iowa tuition grant program (Iowa Code section 261.9, et seq.) must:*

a. Be accredited by the North Central Association of Colleges and Schools (NCA); ~~or and~~

b. ~~Be certified by the NCA as a candidate for accreditation; or~~

b. Be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or, if not exempt under Section 501(c)(3), the college or university must have been an eligible participant during the 2003-04 academic year; and

~~c. Be a school of nursing accredited by the National League for Nursing and approved by the board of nurse examiners, including one operated, controlled, and administered by a county public hospital; and~~

c. Annually provide matching aggregate institutional financial aid to Iowa tuition grant recipients equal to a required percentage of the amount received by its students under the Iowa tuition grant program. (Specialized colleges offering health professional programs affiliated with health care systems located in Iowa are exempt from this requirement.); and

d. Be located in Iowa. “Located in Iowa” means a college or university accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, that has made a substantial investment in a permanent Iowa campus and staff, and that offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services.

12.2(2) Processing college and university applications. Application forms will be provided by the commission.

Applicant colleges and universities are required to provide the commission with documentation establishing *eligibility as described in 12.2(1)* ~~accreditation approval or the approved accreditation plans of the college or university.~~

Colleges and universities seeking to participate in the Iowa tuition grant program must submit applications by January 1 of the year prior to the beginning of the academic year for which they are applying for participation.

Applicant colleges and universities must submit written plans outlining academic programs that integrate summer attendance in accelerated programs prior to making summer awards. If the summer program is approved by the commission, an applicant’s students may receive Iowa tuition grants beginning in the summer following approval. Academic programs, defined by colleges or universities, which allow students to complete four-year baccalaureate programs in less than the normal prescribed time period while taking the same courses as students completing the same degree during a traditional four-year time period will be approved. A summer academic program may be defined for a group of students or may be a self-directed program in which a student has received approval from appropriate officials of the college or university.

12.2(3) Notice of change of status. Any college or university which loses NCA ~~or National League for Nursing accreditation or ceases to be a candidate for NCA accreditation or 501(c)(3) status or fails to make the institutional match~~ must immediately notify the commission. Failure to comply with this notice of change requirement ~~will be justification for revocation of eligibility~~ *may result in the college or university being required to return Iowa tuition grant funds to the commission.*

12.2(4) No change.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

12.2(5) Reporting requirements. Every college or university participating in the Iowa tuition grant program shall submit, each December, a *an annual* report which includes student and faculty information, enrollment and employment information, *the amount of institutional matching financial aid dollars*, and other information required by the commission as described in Iowa Code sections 261.9 through 261.16.

These rules are intended to implement Iowa Code chapter 261.

ARC 3437B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 234.6 and 249.4, the Department of Human Services proposes to amend Chapter 50, "Application for Assistance," Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

In accordance with 2004 Iowa Acts, House File 2134, these amendments implement a new category of State Supplementary Assistance for people who are Medicare and Medicaid eligibles by reason of age or disability, but have income over 135 percent of the federal poverty guidelines. Most of the potentially eligible recipients are receiving care in nursing facilities; others are receiving Medicaid as employed people with disabilities whose income is low enough that they do not have to pay a premium for Medicaid coverage. The state covers the monthly Medicare premiums for these people (currently \$76.44) as part of their Medicaid benefits, but the state cannot receive federal financial participation for those costs.

These amendments would allow people in this group to apply for cash assistance of \$1 per month. Eligibility would not be limited by the income tests for determining "substantial gainful activity" used in the Supplemental Security Income Program. Since recipients of cash assistance qualify for federal financial participation in their Medicaid premium payments, the net savings to the state would be approximately \$40 per month per recipient.

The amendments also make technical changes to eliminate obsolete terminology and references.

These amendments do not provide for waivers in specified situations because additional assistance is a benefit to the client.

Any interested person may make written comments on the proposed amendments on or before July 14, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249.3 and 249.4 as amended by 2004 Iowa Acts, House File 2134, sections 4 and 5.

The following amendments are proposed.

ITEM 1. Amend rule **441—50.1(249)** as follows:

Amend the definition of "disabled" as follows:

"Disabled" shall mean *that* a person ~~who~~ is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death. *Exception: For the supplement for Medicare and Medicaid eligibles, being engaged in substantial gainful activity shall not preclude a determination of disability.* A child under the age of 18 is disabled if the child suffers from any medically determinable physical or mental impairment of comparable severity. For purposes of state-administered payments, ~~determinations of the department shall determine~~ disability shall be made by the department according to rule 441—75.20(249A).

Rescind the definition of "X-PERT."

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 249.3 *as amended by 2004 Iowa Acts, House File 2134, section 4.*

ITEM 2. Amend rule 441—50.2(249) as follows:

Amend subrule **50.2(1)** by adopting the following **new** paragraph "c":

c. Payments for supplements for Medicare and Medicaid eligibles shall be state-administered. Income excluded in determining eligibility for the person's Medicaid coverage group shall be excluded in determining eligibility for the state payment.

Amend subrule 50.2(3), introductory paragraph, as follows:

50.2(3) Any person applying for payment for residential care shall make application at a local ~~or area~~ office of the department of human services or at the residential care facility where the person resides. Any person applying for a dependent person allowance shall make application at a local ~~or area~~ office of the department. Any person applying for payment for a protective living arrangement, ~~or in-home, health-related care, or the supplement for Medicare and Medicaid eligibles~~ shall make application at a local ~~or area~~ office of the department. An application may also be filed ~~directly with an income maintenance worker at any departmental satellite office or in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided.~~

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 249.4 *as amended by 2004 Iowa Acts, House File 2134, section 5.*

ITEM 3. Amend rule 441—50.3(249) as follows:

Adopt the following **new** subrule:

50.3(4) If application is made for the supplement for Medicare and Medicaid eligibles within 15 months of the department's implementation of rule 441—51.6(249), payment shall be effective as of the first date that the eligibility criteria in effect at the time of application were met, but in no case shall the effective date be earlier than October 1, 2003. If application is made for the supplement for Medicare and Medicaid eligibles more than 15 months after the department's implementation of rule 441—51.6(249), payment shall be effective as of the date that eligibility first existed, but in no case shall the effective date be earlier than 3 calendar months before the month of application.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 249.4 as amended by 2004 Iowa Acts, House File 2134, section 5.

ITEM 4. Amend rule 441—51.1(249), introductory paragraph, as follows:

441—51.1(249) Application for other benefits. An applicant or any other person whose needs are included in determining the state supplementary assistance payment must have applied for or be receiving all other benefits, including supplemental security income or aid to dependent children ~~the family investment program~~, for which the person may be eligible. The person must cooperate in the eligibility procedures while making application for the other benefits. Failure to cooperate shall result in ineligibility for state supplementary assistance.

ITEM 5. Amend 441—Chapter 51 by adopting the following **new** rule:

441—51.6(249) Eligibility for supplement for Medicare and Medicaid eligibles. The following eligibility requirements are specific to the supplement for Medicare and Medicaid eligibles:

51.6(1) Medicaid eligibility. The recipient must be eligible for and receiving medical assistance benefits under Iowa Code chapter 249A without regard to eligibility based on receipt of state supplementary assistance under this rule, and without being required to meet a spenddown or pay a premium to be eligible for medical assistance benefits.

51.6(2) SSI eligibility. The recipient shall meet all eligibility requirements for supplemental security income benefits, other than limits on substantial gainful activity or income.

51.6(3) Not otherwise eligible. The recipient must not be eligible for benefits under another state supplementary assistance group.

51.6(4) Medicare eligibility. The recipient must be currently eligible for Medicare Part B.

51.6(5) Living arrangement. A recipient may live in one of the following:

- a. The person's own home.
- b. The home of another person.
- c. A group living arrangement.
- d. A medical facility.

51.6(6) Income. Income of a recipient shall be within the income limit for the person's Medicaid eligibility group, but must exceed 135 percent of the federal poverty level.

This rule is intended to implement Iowa Code section 249.3 as amended by 2004 Iowa Acts, House File 2134, section 4.

ITEM 6. Amend rule 441—52.1(249) as follows:

Amend subrule **52.1(3)**, paragraph "e," introductory paragraph, as follows:

e. Payment will be made for periods the resident is absent overnight for the purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed 30 days during any calendar year, unless a family member or legal guardian of the resident, the resident's physician, case manager, or department service worker provides signed documentation that additional visitation days are desired by the resident and are for the benefit of the resident. This documentation shall be obtained by the facility for each period of paid absence which exceeds the 30-day annual limit. This information shall be retained in the resident's personal file. If documentation is not available to justify periods of absence

in excess of the 30-day annual limit, the facility shall submit a Case Activity Report, Form AA-4166-0 470-0042, to the county office of the department to terminate the state supplementary assistance payment.

Adopt the following **new** subrule:

52.1(7) Supplement for Medicare and Medicaid eligibles. Payment to a person eligible for the supplement for Medicare and Medicaid eligibles shall be \$1 per month.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 234.6, 234.38, 249.2, 249.3, 249.4, and 249A.4 chapter 249 as amended by 2004 Iowa Acts, House File 2134, sections 4 and 5.

ARC 3438B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments affect eligibility and service requirements for the six Medicaid home- and community-based services waivers (AIDS/HIV, brain injury, elderly, ill and handicapped, mental retardation, and physical disability).

These amendments propose the following changes specific to the mental retardation waiver:

- Add a definition of "medical institution." This term is used in the eligibility requirements and is defined for the other five waivers.

- Clarify that organizational outcome standards also apply to agencies certified to provide respite services in the consumer's home, to be consistent with the requirements of subparagraph 77.37(15)"a"(8).

- Expand eligibility requirements for residential-based supported community living services to include children living in an ICF/MR, at risk of placement in an ICF/MR, or in need of long-term placement outside the home, when the children meet the other qualifications for waiver services. These services have been restricted to the children who had been receiving rehabilitative treatment or supportive services through foster group care. Children in that population are now reaching majority and moving to other service settings.

These amendments will allow provision of residential-based supported community living services to other categories of children for whom this placement may be appropriate. The amendment requires preapproval by the Department and specifies what documentation must be submitted to obtain approval.

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These amendments propose the following changes specific to both the mental retardation and brain injury waivers:

- Specify that providers of consumer-directed attendant care and interim medical monitoring and treatment must be at least 18 years of age. It is more appropriate that service to these vulnerable populations be provided by an adult.
- Add requirements to the organizational outcome standards for tracking and review of incident reports.
- Add standards for incident reporting to the qualifications for providers of supported employment and non-residential-based supported community living services. These standards parallel those adopted in 441—Chapter 24 for the accreditation of providers of services to persons with mental illness, mental retardation, or developmental disabilities. Since certification under a home- and community-based services waiver qualifies a provider for deemed status under 441—Chapter 24, it is appropriate that the requirements be comparable.
- Remove from the certification process references to the provider application. These references are redundant, since enrollment procedures for all Medicaid providers are specified in rule 441—79.14(249A).
- Change the reference to “adult day health services” agencies as respite providers to “adult day care providers” with qualifications as provided under these amendments.
- Require that provider budgets for supported community living services reflect costs associated with the specific support needs of the consumers and specify conditions that pertain to these costs.

These amendments propose the following changes specific to adult day care and respite services, which are provided under five waivers (AIDS/HIV, brain injury, elderly, ill and handicapped, and mental retardation):

- Update provider requirements for adult day care services under all five waivers to recognize Iowa Code Supplement chapter 231D, enacted by 2003 Iowa Acts, chapter 165, as the certification authority for these programs.
- Amend all five waivers to clarify the conditions for provision of respite by a camp and to provide that a consumer whose usual caregiver provides consumer-directed attendant care for the consumer cannot receive respite services under the waiver.
- Add licensed or registered child care facilities as allowable providers of respite care under the AIDS/HIV, brain injury, ill and handicapped, and mental retardation waivers.
- Allow respite providers certified under the brain injury waiver to provide respite under the AIDS/HIV and ill and handicapped waivers.

Other substantive changes proposed in these amendments are as follows:

- Remove payment limitations for specialized medical equipment that is provided under the brain injury or physical disability waiver. Payments currently may be released at a rate of only \$500 per month. These amendments allow full payment to the provider upon delivery of the equipment. Up to \$500 of the cost is encumbered monthly against the maximum allowable cost of service until the cost is amortized. The maximum annual payment remains at \$6000. This amendment is consistent with the amendments for home and vehicle modification that were Adopted and Filed and published as **ARC 1840B** in the August 7, 2002, Iowa Administrative Bulletin and that became effective October 1, 2002.
- Remove requirements for specific “gatekeeper” services for the ill and handicapped, mental retardation, and physical disability waivers. Under the amendments, the provision of any waiver service during each calendar quarter

will maintain a consumer’s eligibility. This requirement is consistent with the requirements of the other three waivers.

- Add limitations to the provision of consumer-directed attendant care under all waivers to specify that service can be provided when the consumer’s parent or guardian is absent if authorized in advance by the parent or guardian and that, when a guardian or an attorney in fact under a durable power of attorney for health care is the service provider, oversight must be provided by the service worker or case manager.
- Clarify that providers of home and vehicle modification, specialized medical equipment, transportation, and personal emergency response services under the brain injury waiver are not required to have training or experience related to brain injuries.

Other technical changes proposed in these amendments are as follows:

- Update provider requirements for interim medical monitoring and treatment (covered in the brain injury, ill and handicapped, and mental retardation waivers) to reflect current regulatory categories of child care facilities.
- Replace references to the Division of Mental Health and Developmental Disabilities as the certifying entity with references to the Bureau of Long-Term Care.

These amendments do not provide for waivers in specified situations because they mainly remove restrictions, provide additional protection for consumers, update requirements for consistency with other requirements or name changes, or clarify current policy. Consumers may request a waiver of these provisions under the Department’s general rule at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 14, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

The following amendments are proposed.

ITEM 1. Amend rule 441—77.30(249A) as follows:

Rescind subrule 77.30(3) and adopt the following **new** subrule in lieu thereof:

77.30(3) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24.

Amend paragraph **77.30(5)“a”** as follows:

Amend subparagraphs **(2)** and **(8)** as follows:

(2) Respite providers certified under the HCBS MR *or* BI waiver.

(8) Residential care facilities for persons with mental retardation (**RCF/PMR**) licensed by the department of inspections and appeals.

Adopt the following **new** subparagraph:

(9) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.

Amend paragraph **77.30(8)“a”** as follows:

Rescind subparagraph **(1)** and adopt the following **new** subparagraph in lieu thereof:

(1) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.

Rescind and reserve subparagraphs **(2)** and **(3)**.

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ITEM 2. Rescind subrule 77.33(1) and adopt the following **new** subrule in lieu thereof:

77.33(1) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24.

ITEM 3. Amend rule 441—77.34(249A) as follows:

Amend paragraph **77.34(5)“a”** as follows:

Amend subparagraph (3) as follows:

(3) Respite providers certified under the HCBS MR *or* BI waiver.

Adopt the following **new** subparagraph:

(8) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.

Rescind subrule 77.34(7) and adopt the following **new** subrule in lieu thereof:

77.34(7) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24.

ITEM 4. Amend rule **441—77.37(249A)** as follows:

Amend the two unnumbered paragraphs as follows:

The standards in subrule 77.37(1) apply only to providers of supported employment, respite providers *certified according to subparagraph 77.37(15)“a”(8)*, and providers of supported community living services that are not residential-based. The standards and certification processes in subrules 77.37(2) through 77.37(12) apply only to supported employment providers and non-residential-based supported community living providers.

The requirements in subrule 77.37(13) apply to all providers. Also, services must be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider. *Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.*

Rescind paragraph **77.37(1)“f”** and adopt the following **new** paragraph in lieu thereof:

f. The organization has a systematic, organizationwide, planned approach to designing, measuring, evaluating, and improving the level of its performance. The organization:

(1) Measures and assesses organizational activities and services annually.

(2) Gathers information from consumers, family members, and staff.

(3) Conducts an internal review of consumer service records, including all major and minor incident reports according to subrule 77.37(8).

(4) Tracks incident data and analyzes trends annually to assess the health and safety of consumers served by the organization.

(5) Identifies areas in need of improvement.

(6) Develops a plan to address the areas in need of improvement.

(7) Implements the plan and documents the results.

Rescind subrule 77.37(8) and adopt the following **new** subrule in lieu thereof:

77.37(8) Incident reporting. The provider shall document major and minor incidents and make the incident reports and related documentation available to the department upon re-

quest. The provider shall ensure cooperation in providing pertinent information regarding incidents as requested by the department.

a. Major incident defined. A “major incident” means an occurrence involving a consumer of services that:

(1) Results in a physical injury to or by the consumer that requires a physician’s treatment or admission to a hospital;

(2) Results in someone’s death;

(3) Requires emergency mental health treatment for the consumer;

(4) Requires the intervention of law enforcement;

(5) Requires a report of child abuse pursuant to Iowa Code section 232.69 or a report of dependent adult abuse pursuant to Iowa Code section 235B.3; or

(6) Constitutes a prescription medication error or a pattern of medication errors that could lead to the outcome in subparagraph (1), (2), or (3).

b. Minor incident defined. A “minor incident” means an occurrence involving a consumer of services that is not a major incident and that:

(1) Results in the application of basic first aid;

(2) Results in bruising;

(3) Results in seizure activity;

(4) Results in injury to self, to others, or to property; or

(5) Constitutes a prescription medication error.

c. Report form. Each major or minor incident shall be recorded on an incident report form that is completed and signed by the staff who were directly involved at the time of the incident or who first became aware of the incident. The report shall include the following information:

(1) The name of the consumer involved.

(2) The date and time the incident occurred.

(3) A description of the incident.

(4) The names of all provider staff and others who were present at the time of the incident or responded after becoming aware of the incident. The confidentiality of other consumers who are involved in the incident must be maintained by the use of initials or other means.

(5) The action that the staff took to handle the incident.

(6) The resolution of or follow-up to the incident.

d. Reporting procedure for major incidents. When a major incident occurs, provider staff shall distribute the completed incident report form as follows:

(1) Forward the report to the supervisor within 24 hours of the incident.

(2) Send a copy of the report within 72 hours of the incident to the consumer’s Medicaid targeted case manager, the department’s bureau of long-term care, and the consumer or the consumer’s legal guardian.

(3) File a copy of the report in a centralized location and make a notation in the consumer’s file.

e. Reporting procedure for minor incidents. When a minor incident occurs, provider staff shall distribute the completed incident report form as follows:

(1) Forward the report to the supervisor within 24 hours of the incident.

(2) File a copy of the report in a centralized location and make a notation in the consumer’s file.

Amend subrule 77.37(10) as follows:

Amend the introductory paragraph as follows:

77.37(10) Certification process. Reviews of compliance with standards for initial certification and recertification shall be conducted by the department of human services’ ~~division bureau of mental health and developmental disabilities long-term care~~ quality assurance staff. Certification carries no assurance that the approved provider will receive funding.

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Rescind and reserve paragraphs “a” through “c.”

Amend paragraph 77.37(13)“f” as follows:

f. Providers required to make corrective actions and improvements shall submit the corrective action and improvement plan to the ~~Division Bureau of Mental Health and Developmental Disabilities Long-Term Care, 5th Floor, Hoover State Office Building 1305 East Walnut Street, Des Moines, Iowa 50319-0114,~~ within 30 working days after the receipt of a report issued as a result of the review team’s visit. The corrective actions may include: specific problem areas cited, corrective actions to be implemented by the provider, dates by which each corrective measure will be completed, and quality assurance and improvement activities to measure and ensure continued compliance.

Amend paragraph 77.37(15)“a” as follows:

Amend subparagraphs (3) and (6) as follows:

(3) Residential care facilities for persons with mental retardation (~~RCF/PMR~~) licensed by the department of inspections and appeals.

(6) Adult day health services accredited by the ~~Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF)~~ care providers that meet the conditions of participation set forth in subrule 77.37(25).

Adopt the following new subparagraph:

(9) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.

Amend paragraph 77.37(22)“a” as follows:

Rescind subparagraph (1) and adopt the following new subparagraph in lieu thereof:

(1) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.

Rescind and reserve subparagraphs (2) and (3).

Rescind subrule 77.37(25) and adopt the following new subrule in lieu thereof:

77.37(25) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24.

ITEM 5. Amend rule 441—77.39(249A) as follows:

Amend the introductory paragraph and first unnumbered paragraph as follows:

441—77.39(249A) HCBS brain injury waiver service providers. Adult day care, behavioral programming, case management, consumer-directed attendant care, family counseling and training, home and vehicle modification, interim medical monitoring and treatment, personal emergency response, prevocational service, respite, specialized medical equipment, supported community living, supported employment, and transportation providers shall be eligible to participate as approved brain injury waiver service providers in the Medicaid program based on the applicable subrules pertaining to the individual service and provided that they. Providers and each of their staff involved in direct consumer service must have training regarding or experience with consumers who have a brain injury, with the exception of providers of home and vehicle modification, specialized medical equipment, transportation, and personal emergency response.

Services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled

HCBS provider. *Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.*

In addition, behavioral programming, supported community living, and supported employment providers shall meet the outcome-based standards set forth below in subrules 77.39(1) and 77.39(2) evaluated according to subrules 77.39(8) to 77.39(10), and the requirements of subrules 77.39(3) to 77.39(7). Respite providers shall also meet the standards in subrule 77.39(1).

Rescind paragraph 77.39(1)“f” and adopt the following new paragraph in lieu thereof:

f. The organization has a systematic, organizationwide, planned approach to designing, measuring, evaluating, and improving the level of its performance. The organization:

(1) Measures and assesses organizational activities and services annually.

(2) Gathers information from consumers, family members, and staff.

(3) Conducts an internal review of consumer service records, including all major and minor incident reports according to subrule 77.37(8).

(4) Tracks incident data and analyzes trends annually to assess the health and safety of consumers served by the organization.

(5) Identifies areas in need of improvement.

(6) Develops a plan to address the areas in need of improvement.

(7) Implements the plan and documents the results.

Amend subrule 77.39(6) as follows:

77.39(6) Reporting requirements.

a. Abuse reporting requirements. The provider shall have written policies and procedures and a staff training program for the identification and reporting of child and dependent adult abuse to the department pursuant to 441—Chapters 175 and 176.

b. Incident reporting. *The provider shall document major and minor incidents and make the incident reports and related documentation available to the department upon request. The provider shall ensure cooperation in providing pertinent information regarding incidents as requested by the department.*

(1) Major incident defined. A “major incident” means an occurrence involving a consumer of services that:

1. Results in a physical injury to or by the consumer that requires a physician’s treatment or admission to a hospital;

2. Results in someone’s death;

3. Requires emergency mental health treatment for the consumer;

4. Requires the intervention of law enforcement;

5. Requires a report of child abuse pursuant to Iowa Code section 232.69 or a report of dependent adult abuse pursuant to Iowa Code section 235B.3; or

6. Constitutes a prescription medication error or a pattern of medication errors that could lead to the outcome in numbered paragraph “1,” “2,” or “3.”

(2) Minor incident defined. A “minor incident” means an occurrence involving a consumer of services that is not a major incident and that:

1. Results in the application of basic first aid;

2. Results in bruising;

3. Results in seizure activity;

4. Results in injury to self, to others, or to property; or

5. Constitutes a prescription medication error.

(3) Report form. Each major or minor incident shall be recorded on an incident report form that is completed and

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signed by the staff who were directly involved at the time of the incident or who first became aware of the incident. The report shall include the following information:

1. The name of the consumer involved.
2. The date and time the incident occurred.
3. A description of the incident.
4. The names of all provider staff and others who were present at the time of the incident or responded after becoming aware of the incident. The confidentiality of other consumers who are involved in the incident must be maintained by the use of initials or other means.
5. The action that the staff took to handle the incident.
6. The resolution of or follow-up to the incident.

(4) Reporting procedure for major incidents. When a major incident occurs, provider staff shall distribute the completed incident report form as follows:

1. Forward the report to the supervisor within 24 hours of the incident.
2. Send a copy of the report within 72 hours of the incident to the consumer's Medicaid targeted case manager, the department's bureau of long-term care, and the consumer or the consumer's legal guardian.
3. File a copy of the report in a centralized location and make a notation in the consumer's file.

(5) Reporting procedure for minor incidents. When a minor incident occurs, provider staff shall distribute the completed incident report form as follows:

1. Forward the report to the supervisor within 24 hours of the incident.
2. File a copy of the report in a centralized location and make a notation in the consumer's file.

Amend subrule 77.39(8) as follows:

Amend the introductory paragraph as follows:

77.39(8) Certification process. Reviews of compliance with standards for initial certification and recertification shall be conducted by the department of human services' ~~division bureau of mental health and developmental disabilities~~ long-term care quality assurance staff. Certification carries no assurance that the approved provider will receive funding.

Rescind and reserve paragraphs "a" through "c."

Amend paragraph **77.39(14)"a"** as follows:

Amend subparagraphs (2) and (7) as follows:

(2) Adult day ~~health service care~~ providers accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF) that meet the conditions of participation set forth in subrule 77.39(20).

(7) Residential care facilities for persons with mental retardation (RCF/PMR) licensed by the department of inspections and appeals.

Adopt the following **new** subparagraph:

(10) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.

Rescind subrule 77.39(20) and adopt the following **new** subrule in lieu thereof:

77.39(20) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24.

Amend paragraph **77.39(25)"a"** as follows:

Rescind subparagraph (1) and adopt the following **new** subparagraph in lieu thereof:

(1) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.

Rescind and reserve subparagraphs (2) and (3).

ITEM 6. Amend rule 441—78.34(249A) as follows:

Amend paragraph **78.34(5)"d"** as follows:

d. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the ~~provider~~ consumer is attending a camp. *Respite cannot be provided to a consumer whose usual caregiver is a consumer-directed attendant care provider for the consumer.*

Amend subrule **78.34(7)** as follows:

Amend paragraph "h" as follows:

h. If the consumer has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met. *If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.*

Adopt the following **new** paragraph:

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

ITEM 7. Amend rule 441—78.37(249A) as follows:

Amend paragraph **78.37(6)"h"** as follows:

h. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the ~~provider~~ consumer is attending a camp. *Respite cannot be provided to a consumer whose usual caregiver is a consumer-directed attendant care provider for the consumer.*

Amend subrule **78.37(15)** as follows:

Amend paragraph "h" as follows:

h. If the consumer has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met. *If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.*

Adopt the following **new** paragraph:

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

ITEM 8. Amend rule 441—78.38(249A) as follows:

Amend paragraph **78.38(5)"h"** as follows:

h. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the ~~provider~~ consumer is attending a camp. *Respite cannot be provided to a consumer whose usual caregiver is a consumer-directed attendant care provider for the consumer.*

Amend subrule **78.38(8)** as follows:

Amend paragraph "h" as follows:

h. If the consumer has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met. *If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.*

Adopt the following **new** paragraph:

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

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ITEM 9. Amend rule 441—78.41(249A) as follows:

Amend paragraph **78.41(1)“f,”** introductory paragraph, as follows:

f. Provider budgets shall reflect all staff-to-consumer ratios and shall reflect costs associated with consumers' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each consumer. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per consumer year, and the provider must maintain records to support the expenditures. A unit of service is:

Amend paragraph **78.41(2)“g”** as follows:

g. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the provider consumer is attending a camp. Respite cannot be provided to a consumer whose usual caregiver is a consumer-directed attendant care provider for the consumer.

Amend subrule **78.41(8)** as follows:

Amend paragraph **“h”** as follows:

h. If the consumer has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met. *If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.*

Adopt the following **new** paragraph:

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

ITEM 10. Amend rule 441—78.43(249A) as follows:

Amend paragraph **78.43(2)“e,”** introductory paragraph, as follows:

e. Provider budgets shall reflect all staff-to-consumer ratios and shall reflect costs associated with consumers' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each consumer. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per consumer year, and the provider must maintain records to support the expenditures. A unit of service is:

Amend paragraph **78.43(3)“d”** as follows:

d. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the provider consumer is attending a camp. Respite cannot be provided to a consumer whose usual caregiver is a consumer-directed attendant care provider for the consumer.

Amend subrule **78.43(13)** as follows:

Amend paragraph **“h”** as follows:

h. If the consumer has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met. *If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.*

Adopt the following **new** paragraph:

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

ITEM 11. Amend subrule **78.46(1)** as follows:

Amend paragraph **“h”** as follows:

h. If the consumer has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met. *If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.*

Adopt the following **new** paragraph:

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

ITEM 12. Amend subrule **79.1(2)** as follows:

Amend provider category “HCBS brain injury waiver service providers,” numbered paragraph **“10,”** as follows:

Provider category	Basis of reimbursement	Upper limit
10. Specialized medical equipment	Fee schedule	\$500 per month, not to exceed \$6,000 per year

Amend provider category “HCBS physical disability waiver service providers,” numbered paragraph **“4,”** as follows:

Provider category	Basis of reimbursement	Upper limit
4. Specialized medical equipment	Fee schedule	\$500 per month, not to exceed \$6,000 per year

ITEM 13. Amend paragraph **83.2(1)“g”** as follows:

g. The person must have service needs that can be met by this waiver program. At a minimum a person must receive a *one billable unit of adult day care, consumer-directed attendant care, counseling, home health aid, homemaker, interim medical monitoring and treatment, nursing, or respite service under the waiver per calendar quarter.*

ITEM 14. Amend rule **441—83.60(249A)** by adopting the following **new** definition in alphabetical order:

“Medical institution” means a nursing facility, intermediate care facility for the mentally retarded, or hospital which has been approved as a Medicaid vendor.

ITEM 15. Amend paragraphs **83.61(1)“e”** and **“k”** as follows:

e. Have service needs that can be met by this waiver program. At a minimum, ~~an adult a consumer~~ must receive one *billable unit of either consumer-directed attendant care, supported community living, respite, or supported employment service per calendar quarter. Children shall, at a minimum, receive one unit of either consumer-directed attendant care, interim medical monitoring and treatment service, respite service or supported community living service per calendar quarter under this program.*

k. For residential-based supported community living services, meet all of the following additional criteria:

(1) Be less than 18 years of age.

(2) ~~Have been placed on June 30, 2001, in a group care program that the department contracted with to provide rehabilitative treatment and supportive services for children with mental retardation or a related condition pursuant to 441—Chapter 152 and licensed under 441—Chapter 116.~~ *Be preapproved as appropriate for residential-based supported community living services by the bureau of long-term care. Requests for approval shall be submitted in writing to the DHS Bureau of Long-Term Care, 1305 East Walnut Street,*

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Des Moines, Iowa 50319-0114, and shall include the following:

1. *Social history;*
2. *Case history that includes previous placements and service programs;*
3. *Medical history that includes major illnesses and current medications;*
4. *Current psychological evaluations and consultations;*
5. *Summary of all reasonable and appropriate service alternatives that have been tried or considered;*
6. *Any current court orders in effect regarding the child;*
7. *Any legal history;*
8. *Whether the child is at risk of out-of-home placement or the proposed placement would be less restrictive than the child's current placement for services;*
9. *Whether the proposed placement would be safe for the child and for other children living in that setting; and*
10. *Whether the interdisciplinary team is in agreement with the proposed placement.*

(3) *Either:*

1. *Be residing outside the home in a residential-based living environment furnished by the residential-based supported community living service provider, in an ICF/MR;*
2. *Be at risk of ICF/MR placement, as documented by an interdisciplinary team assessment pursuant to paragraph 83.61(2)“a”;* or
3. *Be a child whose long-term placement outside the home is necessary because continued stay in the home would be a detriment to the health and welfare of the child or the family, and all service options to keep the child in the home have been reviewed by an interdisciplinary team, as documented in the service file.*

ITEM 16. Amend paragraph **83.102(1)“j”** as follows:

- j. ~~Use a minimum of one unit of consumer-directed attendant care service or personal emergency response system service each per calendar quarter under this program.~~

ARC 3439B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment adds Medicaid coverage of dental hygiene services in maternal health centers. Services must comply with the scope of practice as determined by the Iowa Board of Dental Examiners.

The Iowa Department of Public Health has requested that Medicaid allow the services to be covered. Currently 6 of the 26 maternal health centers provide dental hygiene services to pregnant women covered by Medicaid under exceptions to policy (waivers). Eight other centers have a dental hygienist on staff but have not requested a waiver. Oral health can af-

fect the birth outcome and there are significant areas of Iowa that are underserved by dentists.

This amendment does not provide for waivers in specified situations because it is an expansion of coverage.

Any interested person may make written comments on the proposed amendment on or before July 28, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend subrule **78.25(2)** by adopting the following **new** paragraph **“e”**:

- e. Dental hygiene services within the scope of practice of dental hygiene in a public health setting, as defined by the board of dental examiners at 650—paragraph 10.5(3)“b.”

ARC 3445B**IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement sections 97B.4 and 97B.15, the Iowa Public Employees’ Retirement System (IPERS) hereby gives Notice of Intended Action to amend 495—Chapter 4, “Employers,” and 581—Chapter 21, “Iowa Public Employees’ Retirement System,” Iowa Administrative Code.

The purpose of this proposed rule making is to comply with 2004 Iowa Acts, House File 2262, enacted by the Eightieth General Assembly during the Second Regular Session and signed by the Governor on April 26, 2004. The legislation requires new contribution rates to be established for sheriffs and deputy sheriffs, changes the cost distribution for the contribution rates for sheriffs and deputy sheriffs, and moves airport firefighters to the protection occupation class effective July 1, 2004. Certain amendments are made to conform current rules with these changes and to establish 22 as the number of “applicable years” used in various retirement calculations for all special service members, as a result of prior legislative changes.

These amendments were prepared after consultation with the IPERS legal, benefits, investments and operational units and the Benefits Advisory Committee.

There are no new waiver provisions included in the proposed amendments. Any person may make written suggestions or comments on the proposed amendments on or before July 13, 2004. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

(515)281-3081. Comments may also be submitted by fax to (515)281-0045, or by E-mail to info@ipers.org.

There will be a public hearing at 9 a.m. on July 13, 2004, at IPERS, 7401 Register Drive, Des Moines, Iowa. Interested persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These proposed amendments were also Adopted and Filed Emergency and are published herein as **ARC 3446B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2004 Iowa Acts, House File 2262, and Iowa Code Supplement sections 97B.49B(1)"c," 97B.49B(1)"e," 97B.49B(3)"b," 97B.49C(1)"a," 97B.49C(1)"d," 97B.49C(2), 97B.49C(3)"a" and 97B.49C(3)"b."

PUBLIC SAFETY DEPARTMENT

Notice of Availability of Funds

Pursuant to 2004 Iowa Acts, Senate File 2298, Division XI, and 661—subrule 55.204(1), Iowa Administrative Code, the Department of Public Safety hereby gives Notice of Availability of Funds for loans to local fire departments for the purchase of equipment through the Fire Fighting Equipment Revolving Loan Fund. Eligible uses of the funds and related requirements are specified in 661 Iowa Administrative Code Chapter 55, Division II.

Loan applications and additional detailed information regarding the loan program may be obtained from the Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50011-3100, or from the Web site of the Fire Service Training Bureau (<http://www.state.ia.us/government/dps/fm/fstb/>). In order to be considered for the current round of funding, completed applications must be received by the Fire Service Training Bureau no later than August 31, 2004. There is \$500,000 appropriated in 2004 Iowa Acts, Senate File 2298, and available for loans.

ARC 3442B

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 13B.4(7), the State Public Defender gives Notice of Intended Action to amend Chapter 7, "Definitions," Chapter 11, "Attorney Fee Contracts," and Chapter 12, "Claims for Indigent Defense Services," and adopt new Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These proposed amendments implement 2004 Iowa Acts, House File 2138, which revises procedures regarding appointment of counsel and approval and judicial review of claims filed with the State Public Defender. The proposed

amendments clarify current practice regarding review and approval of fee claims from court-appointed attorneys and other professionals providing services to indigent clients in court.

Interested persons may make written comments or suggestions on the proposed amendments on or before July 13, 2004. Written materials should be addressed to the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087, faxed to (515)281-7289, or E-mailed to msmith@spd.state.ia.us.

Also, there will be a public hearing on July 13, 2004, at 9 a.m. in Conference Room 424 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the State Public Defender and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3443B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2004 Iowa Acts, House File 2138.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for June is 6.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

New official state interest rates, effective June 10, 2004, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.70%
32-89 days	Minimum 0.90%
90-179 days	Minimum 1.10%
180-364 days	Minimum 1.20%
One year to 397 days	Minimum 1.50%
More than 397 days	Minimum 2.30%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

July 1, 2003 — July 31, 2003	5.50%
August 1, 2003 — August 31, 2003	5.25%
September 1, 2003 — September 30, 2003	6.00%
October 1, 2003 — October 31, 2003	6.50%
November 1, 2003 — November 30, 2003	6.25%
December 1, 2003 — December 31, 2003	6.25%
January 1, 2004 — January 31, 2004	6.25%
February 1, 2004 — February 29, 2004	6.25%
March 1, 2004 — March 31, 2004	6.25%
April 1, 2004 — April 30, 2004	6.00%
May 1, 2004 — May 31, 2004	5.75%
June 1, 2004 — June 30, 2004	6.25%
July 1, 2004 — July 31, 2004	6.75%

ARC 3446B

IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM[495]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends 495—Chapter 4, “Employers,” and 581—Chapter 21, “Iowa Public Employees' Retirement System,” Iowa Administrative Code.

The purpose of these amendments is to comply with 2004 Iowa Acts, House File 2262, enacted by the Eightieth General Assembly during the Second Regular Session and signed by the Governor on April 26, 2004.

495—subrule 4.6(2) is amended to establish the new contribution rates for sheriffs and deputy sheriffs and change the cost distribution for the contribution rates of sheriffs and deputy sheriffs effective July 1, 2004.

495—paragraph 4.6(4)“d” is amended to move the airport firefighters to the protection occupation class effective July 1, 2004.

581—paragraphs 21.8(1)“b,” 21.8(2)“b,” and 21.8(2)“e,” and 581—subrule 21.13(10) are amended to conform current rules with the foregoing changes and to establish 22 as the number of “applicable years” used in various retirement calculations for all special service members, as a result of prior legislative changes.

In compliance with Iowa Code section 17A.4(2), IPERS finds that, because these amendments are beneficial to members and necessary to the current and ongoing administration of the System, additional notice and public participation prior to implementation are impracticable, unnecessary, and contrary to the public interest, and that these amendments should be implemented immediately.

IPERS also finds, pursuant to Iowa Code section 17A.5(2)“b”(1) and (2), that the normal effective date of the amendments should be waived and the amendments should be made effective on July 1, 2004, because the statute so provides and because the amendments confer a benefit upon members.

Notice of Intended Action regarding these amendments is published herein as **ARC 3445B** to give interested persons adequate notice of the changes and an opportunity to respond.

There are no waiver provisions included because these amendments provide a benefit to members.

IPERS adopted these amendments on June 4, 2004.

These amendments are intended to implement 2004 Iowa Acts, House File 2262, and Iowa Code Supplement sections 97B.49B(1)“c,” 97B.49B(1)“e,” 97B.49B(3)“b,” 97B.49C(1)“a,” 97B.49C(1)“d,” 97B.49C(2), 97B.49C(3)“a” and 97B.49C(3)“b.”

These amendments will become effective on July 1, 2004. The following amendments are adopted.

ITEM 1. Amend 495—subrule 4.6(2) as follows:

4.6(2) Sheriffs, and deputy sheriffs, and airport firefighters, effective July 1, 2004.

- a. Member's rate—~~5.10%~~ 8.535%.
- b. Employer's rate—~~7.66%~~ 8.535%.

ITEM 2. Amend **495—paragraph 4.6(4)“d”** as follows:

d. Airport firefighters employed by the military division of the department of public defense (*airport firefighters*). Effective July 1, 1994, airport firefighters employed by the mil-

itary division of the department of public defense shall pay the same contribution rate, and receive benefits under the same formula, as sheriffs and deputy sheriffs. Service under this paragraph shall include all membership service in IPERS as an airport firefighter. Effective July 1, 2004, airport firefighters become part of and shall make the same contributions as the other members covered under Iowa Code Supplement section 97B.49B. From July 1, 1994, through June 30, 2004, airport firefighters were grouped with and made the same contributions as sheriffs and deputy sheriffs. From July 1, 1988, through June 30, 1994, airport firefighters were grouped with and made the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1986, through June 30, 1988, airport firefighters were a separate protection occupation group and made contributions at a rate calculated for members of that group. Prior to July 1, 1986, airport firefighters were grouped with regular members and made the same contributions as regular members.

Notwithstanding the foregoing, all airport firefighter service prior to July 1, 2004, shall be coded by IPERS as sheriff/deputy sheriff/airport firefighter service, and all airport firefighter service after June 30, 2004, shall be coded by IPERS as protection occupation service. This coding, however, shall not supersede provisions of this title that require members to make contributions at higher rates in order to receive certain benefits, such as in the hybrid formula pursuant to 581—subrule 21.13(10).

ITEM 3. Amend **581—paragraph 21.8(1)“b,”** introductory paragraph, as follows:

b. Employer accumulated contributions. Effective July 1, 1999, IPERS shall also pay to vested members, in addition to the employee accumulated contributions, a refund of a portion of the employer accumulated contributions. The refundable portion shall be calculated by multiplying the employer accumulated contributions by the “service factor.” The “service factor” is a fraction, the numerator of which is the member's quarters of service and the denominator of which is the “applicable quarters.” The “applicable quarters” shall be 120 for regular members, ~~the “applicable years of service” under Iowa Code section 97B.49B(1)“b,” multiplied by four, for protection occupation members, and 88 for sheriffs, deputy sheriffs and airport firefighters and 88 for all special service members.~~ All quarters of service credit shall be included in the numerator of the service factor. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

ITEM 4. Amend **581—paragraph 21.8(2)“b”** as follows:

b. If a member is eligible for a hybrid refund, the member's portion of employer accumulated contributions shall be calculated by multiplying the total employer accumulated contributions by: (1) the member's regular service factor, if any; and (2) the ~~protection occupation~~ *special* service factor, if any; and (3) ~~the sheriff/deputy sheriff/airport firefighter service factor, if any (except as otherwise provided in this subrule).~~ The amounts obtained will be added together to determine the amount of the employer accumulated contributions payable. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

ITEM 5. Amend **581—paragraph 21.8(2)“e”** as follows:

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

e. If a member is last employed in a sheriff, *or* deputy sheriff, *or* airport firefighter position, all quarters of "eligible service," as defined in Iowa Code *Supplement* section 97B.49C(1)"d," shall be counted as quarters of sheriff/*or* deputy sheriff/airport firefighter service credit.

ITEM 6. Amend 581—subrule 21.13(10) as follows:

21.13(10) Hybrid formula for members with more than one type of service credit.

a. Eligibility. Effective July 1, 1996, members having both regular and special service credit (as defined in Iowa Code section 97B.1A(21)) shall receive the greater of the benefit amount calculated under this subrule, or the benefit amount calculated under the applicable nonhybrid benefit formula.

(1) Members who have a combined total of 16 quarters of service may utilize the hybrid formula.

(2) ~~Members who have both types of special service under Iowa Code section 97B.1A(21), but do not have any regular service, may utilize the hybrid formula.~~

(3) The following classes of members are not eligible for the hybrid formula:

1. Members who have only regular service credit.

2. Members who have 22 years of sheriff/deputy sheriff/airport firefighter *special* service credit as defined under Iowa Code *Supplement* section 97B.49C.

3. ~~Members who have 25 years of protection occupation service credit as defined in Iowa Code section 97B.49B (or the applicable years in effect at the member's retirement).~~

4-3. Members who have 30 years of regular service.

5-4. Members with less than 16 total quarters of service.

b. Assumptions. IPERS shall utilize the following assumptions in calculating benefits under this subrule.

(1) The member's three-year average covered wage shall be determined in the same manner as it is determined for the nonhybrid formula.

(2) Increases in the benefit formula under this subrule shall be determined as provided under Iowa Code section 97B.49D. The percentage multiplier shall only be increased for total years of service over 30.

(3) Years of service shall be utilized as follows:

1. Quarters which have two or more occupation class codes shall be credited as the class that has the highest reported wage for said quarter. A member shall not receive more than one quarter of credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

2. Quarters shall not be treated as special service quarters unless the applicable employer and employee contributions have been made.

c. Years of service fraction not to exceed one.

(1) In no event shall a member's years of service fraction under the hybrid formula exceed, in the aggregate, one.

(2) If the years of service fraction does, in the aggregate, exceed one, the member's quarters of service credit shall be reduced until the member's years of service fraction equals, in the aggregate, one.

(3) Service credit shall first be subtracted from the member's regular service credit and, if necessary, shall next be subtracted from the member's protection occupation service *special* service credit, and sheriff/deputy sheriff/airport firefighter service credit, in that order.

d. Age reduction. The portion of the member's benefit calculated under this subrule that is based on the member's regular service shall be subject to a reduction for early retirement. In calculating the age reduction to be applied to the portion of the member's benefit based on the member's regu-

lar service, the system shall use all quarters of service credit, including both regular and special service quarters.

e. Calculations. A member's benefit under the hybrid formula shall be the sum of the following:

(1) The applicable percentage multiplier divided by 22 times the years of sheriff/deputy sheriff/airport firefighter *special* service credit (if any) times the member's high three-year average covered wage, plus

(2) ~~The applicable percentage multiplier divided by 25 (or the applicable years at that time under Iowa Code section 97B.49B) times the years of protection occupation class service credit (if any) times the member's high three-year average covered wage, plus~~

(3) The applicable percentage multiplier divided by 30 times the years of regular service credit (if any) times the member's high three-year average covered wage minus the applicable wage reduction (if any).

If the sum of the percentages obtained by dividing the applicable percentage multiplier by 22, 25 (or the applicable years at that time under Iowa Code section 97B.49B), and 30 and then multiplying those percentages by years of service credit exceeds the applicable percentage multiplier for that member, the percentage obtained above for each class of service shall be subject to reduction so that the total shall not exceed the member's applicable percentage multiplier in the order specified in paragraph "c," subparagraph (3), of this subrule.

[Filed Emergency 6/4/04, effective 7/1/04]

[Published 6/23/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/23/04.

ARC 3443B

STATE PUBLIC DEFENDER[493]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 13B.4(7), the State Public Defender amends Chapter 7, "Definitions," Chapter 11, "Attorney Fee Contracts," and Chapter 12, "Claims for Indigent Defense Services," and adopts new Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These amendments implement 2004 Iowa Acts, House File 2138, which revises procedures regarding appointment of counsel and approval and judicial review of claims filed with the State Public Defender. These amendments clarify current practice of the State Public Defender regarding review and approval of fee claims from court-appointed attorneys and other professionals providing services to indigent clients in court.

In compliance with Iowa Code section 17A.4(2), the State Public Defender finds that notice and public participation are impractical because these amendments are required to comply with statutory changes or merely reflect current practice.

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective on July 1, 2004, because the amendments confer a benefit on the public by eliminating inconsistencies between the current rules and 2004 Iowa Acts, House File 2138, which becomes effective on July 1, 2004.

STATE PUBLIC DEFENDER[493](cont'd)

These amendments are also published herein under Notice of Intended Action as **ARC 3442B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2004 Iowa Acts, House File 2138.

These amendments will become effective July 1, 2004. The following amendments are adopted.

ITEM 1. Amend rule **493—7.1(13B,815)** as follows:

Amend the following definitions:

“Case” means all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding. *A probation violation or contempt proceeding is a case separate from the case out of which the violation or contempt arose.*

“Court-appointed attorney” means an attorney appointed by the court to represent an indigent person ~~whether or not the attorney has a contract with the state public defender.~~

“Fees” means the consideration paid to an appointed attorney to represent an indigent *person*.

“In-court time” means time spent by an appointed attorney engaged before a judge or jury including, but not limited to, arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings. In-court time does not include time spent at foster care review board hearings, staffings, *family drug court*, or any other meetings with other state agencies.

“Paralegal time,” *which is payable from the indigent defense fund*, means time spent preparing pleadings and motions, reviewing transcripts, performing legal research, interviewing witnesses *in person*, and attending staffings in juvenile cases. *In Class A felony cases in which only one attorney is appointed, paralegal time may include time spent in court assisting the appointed attorney.* Paralegal time does not include *typing, talking on the telephone or other clerical activities or activities that duplicate work performed by the appointed attorney.*

“State public defender” means the state public defender appointed pursuant to Iowa Code chapter 13B *and those other persons authorized to act on behalf of the state public defender.*

“Timely claim” means a claim ~~processed prior to August 31 in the year following the fiscal year submitted to the state public defender for payment within 45 days of the date of service in a case in which the attorney was appointed after June 30, 2004.~~

“Travel time,” *which is payable from the indigent defense fund*, means the reasonable and necessary time spent by the attorney ~~in automobile~~ for travel under one of the following circumstances:

1. No change.
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred *or if the location of the court hearing has been changed to a different county for the convenience of the court;*
3. to 6. No change.
7. To and from a court of appeals or supreme court argument; ~~or~~
8. *To and from the location where the deposition of an expert witness is being taken; or*
9. Other travel for which authorization is obtained from the state public defender.

Add the following **new** definitions in alphabetical order:

“Claim” means an application or request for payment.

“County base” means the amount of expenses in juvenile cases for which the county remains liable pursuant to Iowa Code section 232.141(2).

“Expert witness” or “expert” means a person who is retained to render an opinion regarding an issue relevant to a case, whether or not the person actually testifies in court.

“Fiscal year” means the 12-month period beginning July 1 and ending June 30.

ITEM 2. Amend subrule 11.5(2) as follows:

11.5(2) A contract can only be in force and effect when *a contract acceptance form is signed by the contracting attorney and approved by the state public defender.*

ITEM 3. Amend subrule 11.5(6) as follows:

11.5(6) Compensation. ~~The~~ *Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815) for trial work and rule 493—12.5(13B,815) for appellate work.*

ITEM 4. Amend rule 493—11.5(13B) by adding the following **new** subrule:

11.5(7) Contract form. Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Legal Services Contract Indigent Defense Casework No. 493-04 shall constitute the agreement between the parties.

ITEM 5. Amend rule 493—11.7(13B) as follows:

493—11.7(13B) Reconsideration. A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten days of receipt of notice of the action. The request for reconsideration shall state the grounds upon which the attorney challenges the action and contain any additional facts or circumstances the attorney wants the state public defender to consider. The state public defender shall then hold a hearing and may uphold, reverse or modify the prior decision. The decision following this reconsideration shall be made in writing and shall set forth all of the findings relied upon in making the decision. ~~If an attorney remains aggrieved by the decision after the reconsideration, the attorney may seek judicial review of the decision. The action of the state public defender following this reconsideration is final agency action.~~

ITEM 6. Amend rule 493—12.1(13B,815) by adding the following **new** subrules:

12.1(1) The state public defender will pay from the indigent defense fund attorney fees and costs for the following types of cases: commitment of sexually violent predators under Iowa Code chapter 229A; contempts; postconviction relief proceedings to the extent authorized under Iowa Code chapter 822; juvenile justice under Iowa Code section 232.141(3)(c); guardians ad litem for children in juvenile court under Iowa Code chapter 600 or 600A; fees for appellate attorneys under Iowa Code section 814.11; fees for attorneys under Iowa Code section 815.7; fees for court-appointed counsel under Iowa Code section 815.10; violation of probation under Iowa Code section 908.11; indigent’s right to transcript on appeal under Iowa Code section 814.9; indigent’s application for transcript in other cases under Iowa Code section 814.10; and special witnesses for indigents under Iowa Code section 815.4.

12.1(2) The state public defender will not pay for the costs for any type of administrative proceeding or any other proceeding under Iowa Code chapter 598, 600, 600A, 633, or 915 or other provisions of the Iowa Code.

STATE PUBLIC DEFENDER[493](cont'd)

ITEM 7. Amend subrule **12.2(1)**, paragraph “a,” as follows:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court and, *postconviction relief and applications for discretionary review or interlocutory appeals to the Iowa supreme court*, must be submitted on an ~~Indigent Defense Adult Fee Claim Form form~~. Juvenile fee claims, *including petitions on appeal*, must be submitted on an ~~Indigent Defense a Juvenile Fee Claim Form form~~. Appellate fee claims must be submitted on an ~~Indigent Defense Appellate Fee Claim Form form~~. The claim forms may be obtained from the clerk of court or downloaded from the state public defender Web site: www.spd.state.ia.us. *Claims submitted using forms downloaded from the Web site that do not comply with the instructions on the Web site may be returned to the claimant.*

ITEM 8. Amend subrule **12.2(1)**, paragraph “b,” subparagraph (2), as follows:

(2) Claims for probation violations, ~~parole violations~~ and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these claims.

ITEM 9. Amend subrule **12.2(1)**, paragraph “e,” subparagraph (1), as follows:

(1) The itemization must separately state the date and amount of time spent on each activity. Time ~~should~~ *must* be recorded in tenths of an hour *on the claim form*. Time listed in hundredths of an hour will be reduced to the nearest tenth of an hour.

ITEM 10. Amend subrule **12.2(1)** by adding the following **new** paragraph:

f. If the attorney was privately retained to represent the client prior to appointment, a copy of any representation agreement, written notice of the dollar amount paid to the attorney, and an itemization of services performed and how any funds provided were spent during the period prior to the court appointment. The state public defender will review the amount paid and hours spent before and after the court appointment in determining the appropriate attorney compensation on the claim.

ITEM 11. Amend subrule 12.2(2) as follows:

12.2(2) The state public defender shall forward claims to the department for processing and payment only after all reporting requirements have been complied with and the claim has been approved by the state public defender. *Claims returned to the attorney for additional information will be processed after the requested information is received.*

ITEM 12. Amend subrule 12.2(3) as follows:

12.2(3) ~~Processing of claims that are not timely claims may be delayed.~~ *Claims submitted prior to the date of service will be returned to the claimant and may be resubmitted for processing after the date of service.*

ITEM 13. Amend subrule 12.2(6) as follows:

12.2(6) ~~If a claim is not timely, services rendered in a fiscal year subsequent to the fiscal year of the date of service will be denied but may be included in a subsequent claim for services.~~ *For cases to which the attorney is appointed after June 30, 2004, claims that are not timely will be denied. Time billed on claims which are denied, or which could have been denied, pursuant to this subrule may be included in subsequent claims if timely submitted with regard to a subsequent date of service in the same case.*

ITEM 14. Amend subrule 12.2(9) as follows:

12.2(9) ~~Claims seeking for compensation without complying that do not comply with Iowa Code section 814.11(6) or 815.10(5) will be denied.~~

ITEM 15. Amend rule 493—12.2(13B,815) by adding the following **new** subrules:

12.2(10) Claims for compensation for time spent in withdrawing from a case for the convenience of the attorney will be reduced.

12.2(11) The following applies to claims by a guardian ad litem for a child who is aged 18 or older and involved in a juvenile court proceeding:

a. The court must enter an order appointing the guardian ad litem for the limited purposes of continuing a relationship with the child and to provide advice to the child relating to the child’s transition plan under Iowa Code section 232.2 beyond the child’s eighteenth birthday.

b. Neither a parent nor guardian of the child in interest is entitled to court-appointed counsel during the post-age 18 transition period.

c. The guardian ad litem appointment shall end by the earlier of an order of the court relieving the guardian ad litem of further duties or an order of the court closing the juvenile court case.

12.2(12) A court order that affects the amount of a claim and is entered after the date of the state public defender’s action, except following court review as provided in rule 493—12.9(13B,815), is void.

ITEM 16. Amend subrule 12.3(1) as follows:

12.3(1) Juvenile cases. An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing held in the case. *A court hearing does not include family drug court, staffings or foster care review board hearings.*

ITEM 17. Amend subrule 12.3(3) as follows:

12.3(3) Specific cases. Interim claims in Class A or B felony cases, ~~Class B felony cases, cases under Iowa Code chapter 229A, and cases defined in Iowa Code section 902.12~~ may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney’s appointment.

ITEM 18. Amend rule 493—12.4(13B,815) by adding the following **new** subrule:

12.4(4) Probation violations. The hourly rate for time spent on probation violation proceedings shall be \$50 per hour without regard to the level of the underlying charge.

ITEM 19. Amend rule 493—12.5(13B,815), introductory paragraph, as follows:

493—12.5(13B,815) Appellate contracts. Subject to the provisions of this rule, an attorney who has entered into a contract with the state public defender shall be paid \$1,500 for each appellate case to which the attorney is appointed. One thousand dollars is payable following submission of the attorney’s proof brief; the remainder, ~~at the conclusion of the case, after the final brief is filed.~~

ITEM 20. Amend subrule 12.5(3) as follows:

12.5(3) Juvenile petition on appeal. In a juvenile case in which a petition on appeal is filed, the petition is not considered an appeal for purposes of this rule. The trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on an ~~Indigent Defense a Juvenile Fee Claim Form form~~. If an appellate court orders

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full briefing, the trial court shall appoint an attorney pursuant to *the Iowa Code*. An attorney fee claim for services subsequent to such order must be submitted on an ~~Indigent Defense Appellate Fee Claim Form~~ *form*.

ITEM 21. Amend subrule 12.5(4) as follows:

12.5(4) Unusually complicated cases. In an appeal that is unusually complicated, the attorney may negotiate with the state public defender for a fee in excess of the fees contained in rule 12.5(13B,815). However, this rule does not require that the state public defender agree to a higher fee in any particular case. The term “unusually complicated” as used in this rule means that the case is highly exceptional and complex from a legal or factual perspective and so atypical as to be beyond the purview of both the attorney and the state public defender. A case is not considered unusually complicated merely because the client is difficult to work with or because the case took longer than the attorney anticipated. A case in which an application for further review is filed *or a case in which oral argument is held at a location other than Des Moines* is generally deemed to be “atypical” as that term is used in this rule.

ITEM 22. Rescind rule 493—12.6(13B,815) and adopt the following **new** rule in lieu thereof:

493—12.6(13B,815) Fee limitations.

12.6(1) Adult cases. The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	\$15,000
Class B felonies	\$3,500
Class C felonies	\$1,200
Class D felonies	\$1,000
Aggravated misdemeanors	\$1,000
Serious misdemeanors	\$500
Simple misdemeanors	\$250
Simple misdemeanor appeals to district court	\$250
Contempt/show cause proceedings	\$250
Proceedings under Iowa Code chapter 229A	\$10,000
Probation violation	\$250
Extradition	\$250
Postconviction relief—the greater of \$1,000 or ½ of the fee limitation for the conviction from which relief is sought.	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender’s authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney is appointed to represent a client charged with four counts of forgery, the fee limitations for each charge would apply separately. If the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public de-

fender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

In a criminal case with multiple charges, the fee limitation for the more serious charge is the fee limitation for the case.

12.6(2) Juvenile cases. The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,000
Child in need of assistance (CINA) (through disposition)	\$1,000
Termination of parental rights (TPR) (through disposition)	\$1,500
Juvenile court review and other postdispositional court hearings	\$300
Judicial bypass hearings	\$150
Juvenile commitment hearings	\$150
Juvenile petition on appeal (CINA or TPR)	\$500
Motion for further review after petition on appeal	\$250

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender’s authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is \$1,000 for all four proceedings, not \$1,000 for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to \$1,000 for the child in need of assistance case and up to \$1,500 for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the trial attorney does not need to obtain an appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

12.6(3) Appellate cases. Except as provided in this subrule, the state public defender establishes a fee limitation of \$2,000 for combined attorney time and paralegal time for all activities in appellate cases filed with the Iowa supreme court.

a. In an appeal in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney’s proof brief, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$1,000.

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b. In an appellate case in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$500.

This subrule does not apply to appellate cases to which an attorney with an appellate contract with the state public defender is appointed. See rule 12.5(13B,815).

12.6(4) Claims in excess of fee limitations. A claim in excess of the fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the fee limitations prior to exceeding the fee limitations. If authorization is granted, payment in excess of the fee limitations shall be made only for services performed after the date of submission of the request for authorization.

12.6(5) Retroactivity of authorization. Authorization to exceed the fee limitations shall be effective only as to services performed after a request for authorization to exceed the fee limitations is filed with the court unless the court enters an order specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the fee limitations. Retroactive court orders entered after the date of the state public defender's action on a claim are void.

ITEM 23. Amend subrule 12.7(1) as follows:

12.7(1) The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, ~~investigations~~ *investigators*, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval ~~to hire~~ *for* a certified shorthand reporter, investigator, foreign language interpreter, ~~evaluator~~ *evaluation* or expert prior to incurring any expenses with regard to each.

b. A copy of the application and order granting authority accompanies the claim.

c. The certified shorthand reporter, investigator, foreign language interpreter, ~~evaluator~~ *provider of an evaluation* or expert does not submit a claim for the same services.

d. The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be ~~paid to~~ *used to pay for* the certified shorthand reporter, investigator, foreign language interpreter, ~~evaluator~~ *evaluation*, or expert.

e. A copy of the court order authorizing the expense ~~and approving the dollar amount~~ is attached to the claim.

f. In claims for services of ~~certified shorthand reporters, investigators, foreign language interpreters, or experts, if the service provider charges for a "minimum" amount of time, the attorney determines and certifies that no other services and charges will be made by the provider for any portion of that specific time.~~ *a copy of a court order setting the maximum dollar amount of the claim is attached to the claim.*

g. In ~~a claim~~ *claims* for the cost of an evaluation, the attorney will be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form.

ITEM 24. Amend subrule 12.7(3) as follows:

12.7(3) ~~In the case of an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, paragraphs 12.7(1)"b" to "d" shall apply.~~

ITEM 25. Amend subrule 12.8(1), introductory paragraph, as follows:

12.8(1) The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case *to the extent that the expenses are reasonable and necessary*:

ITEM 26. Amend subrule **12.8(1)** by relettering existing paragraph "**h**" as paragraph "**i**" and adopting **new** paragraph "**h**" as follows:

h. Other claims for expenses such as process service, medical records, videotapes and film will be reimbursed for the actual cost. A receipt or invoice from an outside vendor must be attached to the claim form.

ITEM 27. Amend subrule 12.9(1), introductory paragraph, as follows:

12.9(1) Motions for court review. Court review of the action of the state public defender is initiated by *the* filing of a motion with the ~~appointing~~ *trial* court requesting the review. The following conditions shall apply to all such motions:

ITEM 28. Amend subrule **12.9(1)**, paragraph "**a**," as follows:

a. The motion must be filed with the ~~appointing~~ court within 20 days of the action of the state public defender. *This time limit is jurisdictional and will not be extended by the filing of another claim or obtaining a court order affecting the amount of the claim.*

ITEM 29. Amend subrule **12.9(2)**, paragraph "**a**," as follows:

a. *The motion shall be set for hearing by the court.* Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

ITEM 30. Amend subrule **12.9(2)**, paragraph "**d**," as follows:

d. The court shall ~~not~~ consider *only the* issues ~~not~~ raised in the attorney's motion.

ITEM 31. Amend subrule **12.9(2)**, paragraph "**f**," as follows:

f. If a ruling is entered allowing additional fees, the attorney must file a new ~~Indigent Defense Fee Claim Form~~ *claim* with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

ITEM 32. Amend rule 493—12.9(13B,815) by adding the following **new** subrule:

12.9(3) Failure to seek review. Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

ITEM 33. Amend rule 493—12.10(13B,815) as follows:

493—12.10(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered, the claimant shall notify the clerk of court of the error and shall reimburse the department for the amount of the overpayment. An overpayment that is returned to the department shall be paid by check made payable to the "Treasurer, State of Iowa" and mailed to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. The

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attorney is responsible for notifying the clerk of court of any payment error.

ITEM 34. Adopt the following **new** chapter:

CHAPTER 13

CLAIMS FOR OTHER PROFESSIONAL SERVICES

493—13.1(13B,815) Scope. This chapter sets forth the rules for submission, payment and court review of claims for other professional services. See 493—Chapter 7 for definitions of terms used in this chapter.

493—13.2(815) Claims for other professional services. The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

13.2(1) Claims for investigative services. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

a. The investigator submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the investigator.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation.

(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.

13.2(2) Claims for foreign language interpreters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters if the following conditions are met:

a. The interpreter submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the interpreter.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the interpreter sets a limit for the claim, this court order is unnecessary.

13.2(3) Claims for expert witnesses. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

a. The expert witness submits an original and one copy of a signed claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services.

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

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(5) If the expert charges a "minimum" amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

13.2(4) Claims for certified shorthand reporters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters if the following conditions are met:

a. The certified shorthand reporter submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which the deposition/court proceeding commenced.

(4) The date on which the transcript was ordered.

(5) The date on which the transcript was delivered.

(6) The number of pages and cost per page.

(7) The total amount of the claim.

(8) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the certified shorthand reporter was obtained before any expenses for the certified shorthand reporter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the certified shorthand reporter at state expense.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) Itemization of any additional services or charges based on some criterion other than cost per page.

(4) If the certified shorthand reporter charges a "sitting fee" for services based on a specific time, a certification by the certified shorthand reporter that no other services have been performed or charges made by the certified shorthand reporter for any portion of that specific time.

(5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment, claims for certified shorthand reporter services will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

13.2(5) Claims for court-ordered evaluations. The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations to es-

tablish a defense or to determine whether an indigent is competent to stand trial if the following conditions are met:

a. The person performing the evaluation submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is either to establish a defense to a pending charge or to determine whether an indigent is competent to stand trial.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation.

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

13.2(6) Submission of claims. Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided. Other claims for payment for professional services must be submitted to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

13.2(7) Claims from state employees. Claims submitted by state of Iowa employees must be submitted on a state travel voucher form.

13.2(8) Claim form for other professional services. Claimants other than state of Iowa employees shall use the following form in filing claims for investigative services, foreign language interpreters, expert witnesses, certified shorthand reporters and court-ordered evaluations.

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INDIGENT DEFENSE MISCELLANEOUS FEE CLAIM FORM

1. CHECK THE BOX INDICATING THE TYPE OF CLAIM:			
<input type="checkbox"/> CERTIFIED SHORTHAND REPORTER		<input type="checkbox"/> INVESTIGATOR <input type="checkbox"/> EVALUATION	
<input type="checkbox"/> EXPERT WITNESS		<input type="checkbox"/> INTERPRETER _____ (LANGUAGE)	
<input type="checkbox"/> OTHER (EXPLAIN):			
2. CASE INFORMATION:			
COUNTY: _____		COURT NUMBER: _____	
COURT-APPOINTED ATTORNEY: _____			
TITLE OF CASE: _____			
CLIENT'S FULL NAME: _____			
3. CLAIM INFORMATION:			
CERTIFIED SHORTHAND REPORTER:			
DATE ORDERED ____/____/____		DATE DELIVERED ____/____/____	
ALL OTHER CLAIM TYPES:			
DATE SERVICES BEGAN ____/____/____		DATE SERVICES ENDED ____/____/____	
CLAIM TOTAL: \$			
4. APPROVAL: _____		CLAIM TOTAL: \$	
STATE PUBLIC DEFENDER		(if changed)	
5. CLAIMANT INFORMATION: <input type="checkbox"/> Change of Information			
NAME: _____		EMAIL: _____	
ADDRESS: _____		PHONE: _____	
CITY: _____	STATE: _____	ZIP: _____	FAX: _____
SS # OR FEDERAL ID #: _____		ARE YOU A STATE EMPLOYEE?	
		<input type="checkbox"/> YES <input type="checkbox"/> NO	
6. CERTIFICATION:			
I, THE UNDERSIGNED, CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.			
DATE: ____/____/____		CLAIMANT SIGNATURE: _____	

493—13.3(13B,815) Court review. A claimant whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

13.3(1) Motions for court review. Court review of the action of the state public defender is initiated by filing a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

a. The motion must be filed with the court within 20 days of the action of the state public defender.

b. The motion must set forth each and every ground on which the claimant intends to rely in challenging the action of the state public defender.

c. The motion must have attached to it a complete copy of the claim, together with the notice of action that the claimant seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

It is unnecessary for the state public defender to file any response to the motion.

13.3(2) Hearings. The following shall apply to hearings on motions for court review:

a. The motion shall be set for hearing by the court. Notice of the hearing on the claimant's request for review shall be provided to the claimant and the state public defender at least ten days prior to the date and time set by the reviewing court.

b. Unless the state public defender specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call.

c. The burden shall be on the claimant requesting the review.

d. The court shall consider only the issues raised in the claimant's motion.

e. The court shall issue a written ruling on the issues properly presented in the request for review.

f. If a ruling is entered allowing additional fees, the claimant must file a new claim with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

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13.3(3) Failure to seek review. Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

493—13.4(13B,815) Processing and payment. The state public defender will submit claims to the department for processing and payment. The department will submit claims that are not approved in the current fiscal year to the state appeal board for processing and payment.

493—13.5(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Department of

Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The claimant shall notify the clerk of court of the overpayment or double payment.

493—13.6(815) Claims submitted by a county. Claims submitted to the state pursuant to Iowa Code section 232.141(3) should be submitted to the state public defender for processing and approval on a form provided by the state public defender.

These rules are intended to implement Iowa Code chapters 13B and 815 as amended by 2004 Iowa Acts, House File 2138.

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ARC 3432B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services amends Chapter 106, "Purchasing Standards for Service Contracts," Iowa Administrative Code.

The purpose of this rule making is to revise the applicability of Chapter 106 by deleting the definition of "department and establishment" and adding a new definition of "state agency" pursuant to Iowa Code Supplement chapter 8A, which created the Department of Administrative Services effective July 1, 2003. The definition of "state agency," an entity subject to these rules, in the Department of General Services' former authorizing legislation was similar to the definition of "department and/or establishment" that is used by Iowa Code section 8.47 and is the basis for the companion chapter, Chapter 107, "Uniform Terms and Conditions for Service Contracts," written at the same time as Chapter 106. Therefore, the same applicability definition was used for both chapters. The new definition of "state agency" in Iowa Code Supplement section 8A.101 specifically exempts from Department rules elected officials, the legislative and judicial branches, and political subdivisions of the state. Also included in this rule making is a reference to other rules relating to the purchase of services.

Notice of Intended Action was published in the April 28, 2004, Iowa Administrative Bulletin as **ARC 3303B**. No public comments were received concerning the proposed amendments. The adopted amendments are identical to those published under Notice.

These amendments will become effective on July 28, 2004.

These amendments are intended to implement Iowa Code Supplement sections 8A.101 and 8A.302.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 106] is being omitted. These amendments are identical to those published under Notice as **ARC 3303B**, IAB 4/28/04.

[Filed 6/2/04, effective 7/28/04]
[Published 6/23/04]

[For replacement pages for IAC, see IAC Supplement 6/23/04.]

ARC 3435B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts amendments to Chapter 5, "Public Records and Fair Information Practices," rescinds Chapter 56, "Vocational Rehabilitation Division," and adopts new Chapter 56, "Vocational Rehabilitation Services Division," Iowa Administrative Code.

The amendments incorporate policies and procedures from the Vocational Rehabilitation Services Division's service manual and update existing rules following the annual review of Chapter 56 by the Division. Also, the Division agreed to move written guidelines into rule form following a court settlement.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 31, 2004, as **ARC 3264B**.

At the public hearing held on April 29, 2004, one individual provided written and oral comments. The following changes have been made as a result of the comments received:

1. The following definition has been added to rule 281—56.3(259):

"'Competitive employment' means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which the client is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled."

2. The definition of "impartial hearing officer" in rule 281—56.3(259) has been changed to read as follows:

"'Impartial hearing officer' or 'IHO' means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved previously in the vocational rehabilitation of the applicant or client; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person's objectivity."

3. A new sentence, which states that an appeal must be filed within 90 days of notification of a disputed decision, has been added to rule 281—56.29(259). The rule now reads as follows:

"281—56.29(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and clients shall be informed of the right to appeal and the procedures by which to file an appeal. If an applicant or client is dissatisfied with any agency decision that directly affects the applicant or client, the applicant, client, or designated representative may appeal that decision. The term 'appellant' shall be used to indicate the applicant, client, or designated representative who initiates an appeal. The appellant initiates the appeal process either by filing the appropriate division appeal form, available from any counselor or supervisor of the division, or by calling a counselor or supervisor. If the appeal process is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. An appeal must be filed within 90 days of notification of the disputed decision. Once the appeal form has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation."

4. A reference to 34 CFR 361.5(43) has been added to subrule 56.31(1), which now reads as follows:

EDUCATION DEPARTMENT[281](cont'd)

“**56.31(1)** Mediation shall be conducted by a qualified and impartial mediator, as defined in 34 CFR 361.5(43), trained in effective mediation techniques and selected randomly by the division from a list maintained by the division.”

5. The words “and the division” have been added to subrule 56.31(4). The subrule now reads as follows:

“**56.31(4)** Mediation must be voluntary on the part of the appellant and the division.”

6. Subrule 56.37(6) has been changed to state that the Council meets quarterly. The subrule reads as follows:

“**56.37(6)** Meetings. The council shall convene at least quarterly in locations open and accessible to the general public, including individuals with disabilities. The council’s meetings are subject to Iowa Code chapter 21, the open meetings law.”

These amendments are intended to implement Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, and the federal Social Security Act (42 U.S.C. Section 301, et seq.).

These amendments will become effective July 28, 2004.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [5.3(1), 5.16“3,” Ch 56] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3264B**, IAB 3/31/04.

[Filed 6/4/04, effective 7/28/04]
[Published 6/23/04]

[For replacement pages for IAC, see IAC Supplement 6/23/04.]

ARC 3436B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts amendments to Chapter 84, “Financial Incentives for National Board Certification,” Iowa Administrative Code.

This chapter contains two financial incentive pilot programs for Iowa teachers receiving National Board Certification (NBC) and provides guidelines to administer both pilot programs. The amendments are being made to address situations not anticipated and therefore not heretofore addressed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3136B**. A public hearing was held on March 2, 2004. No written or oral comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 256.44.

These amendments will become effective July 28, 2004. The following amendments are adopted.

ITEM 1. Amend rule **281—84.2(256)**, definition of “a person receives a salary as a classroom teacher,” as follows:

“A person *who* receives a salary as a classroom teacher” means a teacher employed by a school district in Iowa who receives any salary compensation from the school district for providing classroom instruction to students in the school dis-

trict. *The term also means a teacher employed by an area education agency in Iowa who receives all salary compensation through pooled school district funds provided to the area education agency to provide classroom instruction to elementary (including prekindergarten) or secondary students in one or more school districts.*

ITEM 2. Amend rule **281—84.4(256)** by adding the following **new** numbered paragraph “3”:

3. An otherwise-eligible teacher who possesses a teaching contract that is less than full-time shall receive an award prorated to reflect the type of contract (i.e., half-time, quarter-time, etc.).

ITEM 3. Amend rule **281—84.5(256)**, first unnumbered paragraph, as follows:

In the notice of appeal, *which shall be notarized*, the applicant shall give a short and plain statement of the reasons for the appeal.

[Filed 6/4/04, effective 7/28/04]
[Published 6/23/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/23/04.

ARC 3444B**PAROLE BOARD[205]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 904A.4(2) and 906.3, the Board of Parole hereby rescinds Chapters 1 to 15 and adopts new Chapters 1 to 16, Iowa Administrative Code.

These rules are intended to comply with substantial changes in the Iowa Code as well as changes in Board policy and procedure and to reflect a new address for the agency. These changes have necessitated a redrafting of the Board’s administrative rules. A synopsis of the rules is as follows:

Chapter 1 defines the organization, administration, and duties of the Board of Parole.

Chapter 2 provides the general rule-making procedures of the Board of Parole.

Chapter 3 provides the manner in which the public may petition for rule making.

Chapter 4 provides the manner in which the public may request a declaratory ruling.

Chapter 5 provides information regarding the Iowa Fair Information Practices Act.

Chapter 6 defines public records and communications with the Board of Parole.

Chapter 7 provides procedures relating to victim notification.

Chapter 8 provides procedures relating to consideration for parole and work release.

Chapter 9 is reserved.

Chapter 10 provides the general parole and work release supervision procedures of the Board of Parole.

Chapter 11 provides the general parole revocation procedures of the Board of Parole.

Chapter 12 is reserved.

Chapter 13 provides the general parole discharge procedures of the Board of Parole.

PAROLE BOARD[205](cont'd)

Chapter 14 provides procedures relating to executive clemency.

Chapter 15 provides the general appeal procedures of the Board of Parole.

Chapter 16 provides the waiver procedures of the Board of Parole.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 28, 2004, as **ARC 3321B**. A public hearing was held at 10 a.m. on May 18, 2004, at the Board's offices at Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309. Comments, oral and written, were received from the Iowa Civil Liberties Union in opposition to 11.7(6)"d," which is concerned with fearful witnesses who refuse to attend a parole revocation hearing.

After discussion of the rules and the public comments received, the Board of Parole, during its June 3, 2004, meeting, adopted these rules as published under Notice on April 28, 2004, with no changes.

These rules will become effective July 28, 2004.

These rules are intended to implement Iowa Code chapters 17A, 21, 22, 902, 904A, 906, 908, 914, and 915.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 1 to 16] is being omitted. These rules are identical to those published under Notice as **ARC 3321B**, IAB 4/28/04.

[Filed 6/4/04, effective 7/28/04]
[Published 6/23/04]

[For replacement pages for IAC, see IAC Supplement 6/23/04.]

ARC 3440B

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 1, "General," and adopts new Chapter 9, "UST Fund Board Authority to Transfer Liabilities to a Third Party (Loss Portfolio Transfers)," Iowa Administrative Code.

Chapter 1 describes the general mission and course of business of the Board. New rule 591—1.5(455G) adds a provision to address potential conflicts of interest for individual Board members and the manner in which those conflicts are handled. New Chapter 9 describes the guidelines for the Board to consider when making a decision as to whether to enter into a transfer of a portion or all of its liabilities to a third party.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 28, 2004, as **ARC 3308B**. Public comment was received from the Iowa Ethics and Campaign Disclosure Board with regard to the amendment to Chapter 1. The comment recommended the use of the word "shall" in lieu of "should" with regard to a Board member's action. Additionally, it recommended extension of the conflict of interest to apply to personal or financial gain by im-

mediate family members of a Board member as well. These recommendations were incorporated into the adopted rule.

These amendments shall become effective July 28, 2004.

These rules are intended to implement Iowa Code Supplement section 455G.6(17).

The following amendments are adopted.

ITEM 1. Amend 591—Chapter 1 by adding **new** rule 591—1.5(455G) as follows:

591—1.5(455G) Potential conflicts of interest. A conflict of interest exists when a member of the board participates in a way that directly affects the personal or financial interests of the board member or an immediate family member. Any board member who may have a personal or financial interest in an action shall abstain from voting and shall be disqualified from serving and participating in deliberations, evaluations and decisions in bringing forth the proposal to the board for consideration. The board member or members who have or think they may have a conflict of interest shall declare that there is or may be a conflict of interest. When a conflict of interest is determined to exist, the board member shall abstain from voting and shall be recorded as abstaining when votes are taken. A majority of a quorum is necessary for any substantive action taken by the board. A quorum may include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

Any member who has a conflict of interest shall not defeat the quorum and shall not be eligible to vote on the matter in conflict. Any vote by a member with a conflict shall be excluded.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 9 UST FUND BOARD AUTHORITY TO TRANSFER LIABILITIES TO A THIRD PARTY (LOSS PORTFOLIO TRANSFERS)

591—9.1(455G) Board authority for loss portfolio transfers. The board may enter into a transaction with a third party to transfer a portion or all of the board's liabilities. The board maintains the sole discretion to pursue such a transaction and may elect to pursue or not to pursue such a transaction based on whether or not the board deems such a transaction to be in the best interest of the program.

591—9.2(455G) Board liability subsequent to a loss portfolio transfer. Once a claim is transferred as part of a loss portfolio transfer transaction, the board, pursuant to Iowa Code Supplement section 455G.6(17), shall not reimburse any further costs associated with that claim.

591—9.3(455G) Minimum criteria to be evaluated. In order to determine whether or not a transfer of a portion or all of its liabilities is in the best interest of the program, the board will evaluate, at a minimum, the following criteria:

9.3(1) Effect on overall cost to reach closure on sites.

9.3(2) Effect on speed with which site closure will be accomplished.

9.3(3) Qualifications of the potential acquiring entity, including but not limited to:

- Financial viability.
- Experience with environmental claims.
- Knowledge of corrective action guidelines.

9.3(4) Impact on claims not included in the proposed transfer, including but not limited to:

- Ability to timely pay ongoing claims.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

- b. Delays in completing corrective action.
- c. Board's ability to end liability for all claims in the future.

9.3(5) Impact the transfer will have on the statutory rights of the claimants.

591—9.4(455G) Proposal confidentiality. Any proposal submitted to the board will be handled in accordance with applicable Iowa law with regard to confidentiality.

591—9.5(455G) Requirement to seek bids. Any agreement to transfer liabilities shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee.

591—9.6(455G) Proposal review. The board will review and respond within a reasonable time frame to any proposal submitted seeking a transfer of liabilities. Any board decision to enter into an agreement to transfer liabilities shall be completed consistent with public meeting laws in effect at that time. Work required by the department of natural resources at the site may not be delayed pending review of a proposal. Claims will continue to be handled in accordance with board policy during any pending proposal.

These rules are intended to implement Iowa Code Supplement section 455G.6(17).

[Filed 6/4/04, effective 7/28/04]

[Published 6/23/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/23/04.

ARC 3434B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy hereby amends Chapter 130, "Administrative and Regulatory Authority for the Board of Examiners for Massage Therapy," Chapter 131, "Licensure of Massage Therapists," and Chapter 132, "Massage Therapy Education Curriculum"; rescinds Chapter 134, "Disciplinary Procedures for Massage Therapists," and adopts a new Chapter 134, "Discipline for Massage Therapists"; and amends Chapter 135, "Fees," Iowa Administrative Code.

These amendments adopt new subrules for the conduct of persons who attend public meetings, amend requirements for notifying the Board of name and address changes, clarify the education curriculum, and set forth criteria and fees for obtaining a duplicate or reissued license certificate and wallet card. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting. These amendments also adopt a new discipline chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 31, 2004, as **ARC 3233B**. A public hearing was held on April 20, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received at the

hearing. However, the following changes have been made to the amendments published under Notice.

The wording of subrule 131.8(5) has been changed to indicate that the renewal certificate will be sent with the wallet card to the licensee. Subrule 131.8(5) now reads as follows:

"131.8(5) When all requirements for license renewal are met, the licensee shall be sent a license renewal certificate and a wallet card by regular mail."

The wording of subrule 131.8(6) was changed to clarify that only the license certificate need be displayed in the primary site of practice. Subrule 131.8(6) now reads as follows:

"131.8(6) A person licensed to practice as a massage therapist shall keep the license certificate displayed in a conspicuous public place at the primary site of practice."

These amendments were adopted by the Board of Examiners for Massage Therapy on June 1, 2004.

These amendments will become effective July 28, 2004.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [130.4(2), 130.4(3), 130.6, 130.6(3), 130.6(4), Ch 130, impl. clause, 131.8, 131.11 to 131.13, 132.4(1)"c," 132.4(3), Ch 134, 135.1(6) to 135.1(11)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3233B**, IAB 3/31/04.

[Filed 6/3/04, effective 7/28/04]

[Published 6/23/04]

[For replacement pages for IAC, see IAC Supplement 6/23/04.]

ARC 3433B

REGENTS BOARD[681]

Adopted and Filed

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby amends Chapter 1, "Admission Rules Common to the Three State Universities," and Chapter 2, "Supplemental Rules for Each Institution," Iowa Administrative Code.

The Board of Regents reviews recommendations from the Regents universities on an annual basis to add new fees or modify existing fees. The Board is required by Iowa Code section 262.9(18) to give 30 days' notice before increasing fees to the presiding officers of the student government organizations on each campus. Removing references to specific fee amounts will eliminate the need to amend the rules when the fees are changed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 31, 2004, as **ARC 3262B**. No public comment was received on these amendments. The amendments are identical to those published under Notice.

The amendments were adopted by the Board on May 18, 2004.

These rules are intended to implement Iowa Code chapter 262.

These amendments will become effective on July 28, 2004.

REGENTS BOARD[681](cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1, 1.2, 2.27(1), 2.27(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 3262B**, IAB 3/31/04.

[Filed 6/2/04, effective 7/28/04]
[Published 6/23/04]

[For replacement pages for IAC, see IAC Supplement 6/23/04.]

ARC 3430B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12, and 321.377, the Department of Transportation, on June 2, 2004, adopted amendments to Chapter 911, "School Transportation Services Provided by Regional Transit Systems," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 28, 2004, Iowa Administrative Bulletin as **ARC 3305B**.

The amendments update a telephone number, adopt the current Code of Federal Regulations, correct references to the Code of Federal Regulations, add an Internet address for reviewing the regulations, and update citations to the Iowa Code. Also, the amendment in Item 4 coincides with changes in Iowa Code section 321.376. 2002 Iowa Acts, chapter 1140, section 36 [Iowa Code section 321.376], requires that school bus operators receive an authorization to operate a school bus from the Department of Education. A school bus operator's permit is no longer required.

The amendments to the Code of Federal Regulations (CFR) that have become final and effective since the 1999 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

49 CFR Part 653/654/655

FR Vol. 66, No. 154, P. 41996

(Prevention of alcohol misuse and prohibited drug use in transit operations; final rule.)

This rule combines the Federal Transit Administration's (FTA) drug and alcohol testing regulations. It also incorporates guidance issued by FTA in prior years in letters of interpretation, training classes, etc.

FR Vol. 68, No. 250, P. 75455

(Procedures for transportation workplace drug and alcohol testing programs; drug and alcohol management information system reporting; final rule.)

This rule changes the reporting format for all U.S. DOT required testing.

49 CFR Part 571

FR Vol. 65, No. 20, P. 4579-4582

(Federal motor vehicle safety standards; roof crush resistance; final rule.)

This rule delays implementation of revised test procedures for Standard No. 216, roof crush resistance, to allow review of petitions and makes a technical amendment to correct a variance between preamble and regulatory text of April 1999 final rule.

FR Vol. 65, No. 27, P. 6327-6332

(Federal motor vehicle safety standards; hydraulic and electric brake systems; passenger car brake systems; final rule.)

This action makes revisions to Standard No. 135 specifying requirements for brake systems on electric vehicles.

FR Vol. 65, No. 44, P. 11751-11754

(Federal motor vehicle safety standards; school bus body joint strength; final rule; technical amendment; response to petition to delay effective date.)

This document delays the effective date of the final rule amending Standard No. 221, school bus body joint strength, until May 5, 2001. This document also makes a technical amendment by correcting a technical error in that final rule.

FR Vol. 65, No. 93, P. 30679

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This rule amends the occupant crash protection standard to require that future air bags be designed to create less risk of serious air bag-induced injuries than current air bags.

FR Vol. 65, No. 94, P. 30915-30918

(Federal motor vehicle safety standards; speedometer display; final rule.)

This technical amendment corrects an error in Table 2 of Standard No. 101 as a result of a final rule published September 24, 1998.

FR Vol. 65, No. 147, P. 46628-46643

(Federal motor vehicle safety standards; child restraint anchorage systems; final rule.)

This document extends the interim provisions for alternative anchorage standards under Standard No. 225, child restraint anchorage systems.

FR Vol. 65, No. 166, P. 51769-51772

(Federal motor vehicle safety standards; compressed natural gas fuel containers; final rule; correcting amendment.)

This action corrects errors in testing provisions on compressed natural gas fuel containers.

FR Vol. 65, No. 188, P. 57980-57992

(Federal motor vehicle safety standards; final rule.)

This document establishes a new Standard No. 305, electric-powered vehicles: electrolyte spillage and electrical shock protection, addressing safety issues exclusive to electric vehicles.

FR Vol. 65, No. 204, P. 63014-63021

(Federal motor vehicle safety standards; interior trunk release; final rule.)

This document establishes a new Standard No. 401, interior trunk release, which requires that all passenger cars with trunks be equipped with a release latch inside the trunk compartment beginning September 1, 2001.

FR Vol. 65, No. 210, P. 64624-64627

(Federal motor vehicle safety standards; compressed natural gas fuel container integrity; final rule.)

This action amends the test procedures in the federal motor vehicle safety standard concerning compressed natural gas fuel container integrity.

FR Vol. 66, No. 27, P. 9533

(Federal motor vehicle safety standards; electric-powered vehicles: electrolyte spillage and electrical shock protection; final rule.)

This action delays the effective date of the new Standard No. 305, electric-powered vehicles: electrolyte spillage and electrical shock protection, published September 27, 2000, for 60 days and clarifies that it does not apply to electric vehicles covered by Standard No. 500, low-speed vehicles.

FR Vol. 66, No. 160, P. 43113-43121

(Federal motor vehicle safety standards; interior trunk release; final rule.)

TRANSPORTATION DEPARTMENT[761](cont'd)

This action makes several substantive changes to the October 2000 final rule establishing a new federal motor vehicle safety standard that will require passenger cars with trunks to be equipped with a release latch inside the trunk compartment, excluding hatchbacks and station wagons. This action also clarifies the definition of trunk compartment and trunk lid.

FR Vol. 66, No. 182, P. 48220–48221

(Federal motor vehicle safety standards; occupant crash protection; correcting amendments.)

This document reinstates neck injury criteria inadvertently deleted as a result of the correcting amendment published in the Federal Register (63 FR 71390) on December 28, 1998.

FR Vol. 66, No. 232, P. 60157–60161

(Federal motor vehicle safety standards; response to petitions for reconsideration; final rule.)

This document makes clarifying amendments regarding application of the federal motor vehicle safety standard addressing occupant crash safety issues exclusive to electric vehicles. This document also concerns test conditions for battery state of charge and electrical isolation.

FR Vol. 66, No. 240, P. 64358–64367

(Federal motor vehicle safety standards; school bus body joint strength; final rule.)

This action revises the November 5, 1998, National Highway Traffic Safety Administration's final rule amending Standard No. 221, School Bus Body Joint Strength, to make it clearer that the standard applies to small, curved and complex joints, excluding joints that are forward of the passenger component, and to make various other changes in the standard.

FR Vol. 66, No. 243, P. 65375

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This document grants portions of the petitions and denies other portions of the petitions related to the advanced air bag requirements originally published in May 2000.

FR Vol. 67, No. 76, P. 19343–19356

(Federal motor vehicle safety standards; bus emergency exits and window retention and release; final rule.)

This action amends the federal motor vehicle safety standards on bus emergency exits and window retention and release to reduce the likelihood that wheelchair securement anchorages will be installed in locations that permit wheelchairs to be secured where they block access to emergency exit doors.

FR Vol. 67, No. 77, P. 19518–19523

(Federal motor vehicle safety standards; interior trunk release; final rule.)

This document denies requests for exemptions from the referenced rule and also requests for extension of the deadline for compliance. It does, however, increase the speed threshold involved in the performance standard for front opening trunks.

FR Vol. 67, No. 78, P. 19693–19698

(Federal motor vehicle safety standards; prohibitions on sale or lease of defective and noncompliant motor vehicles and items of motor vehicle equipment; final rule.)

This document implements Section 8 of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act) and Section 2504 of the Intermodal Surface Transportation Efficiency Act (ISTEA).

FR Vol. 67, No. 102, P. 36819–36821

(Federal motor vehicle safety standards; air brake systems; final rule.)

This action deletes an obsolete schematic and descriptive language related to a trailer test rig.

FR Vol. 67, No. 117, P. 41348–41354

(Federal motor vehicle safety standards; head impact protection; interim final rule.)

This interim final rule amends the schedule for compliance by manufacturers of vehicles built in two or more stages with the upper interior head protection requirements of Standard No. 201, occupant protection in interior impact.

FR Vol. 67, No. 190, P. 61523–61531

(Federal motor vehicle safety standards; child restraint systems; final rule.)

This rule amends the requirements for child restraint labels and the written instructions that accompany child restraints. This rule makes changes to the format, location, and content of some of the existing requirements.

FR Vol. 67, No. 204, P. 64818–64825

(Federal motor vehicle safety standards; child restraint systems; interim final rule.)

This document amends the child restraint standard regarding the manufacture and use of vests that hold children in place during a crash.

FR Vol. 67, No. 242, P. 77193

(Federal motor vehicle safety standards; final rule.)

This document updates the outdated addresses in the National Highway Traffic Safety Administration's regulation regarding documents incorporated by reference into various federal motor vehicle standards. In addition, this document properly identifies those organizations identified in the regulation that have been replaced by successor organizations.

FR Vol. 67, No. 249, P. 79416

(Federal motor vehicle safety standards; platform lift systems for accessible motor vehicles, platform lift installation on motor vehicles; final rule.)

This document establishes new Standards 403 and 404 for wheelchair lifts and installations in motor vehicles. The standards will become effective December 27, 2004.

FR Vol. 68, No. 3, P. 504–515

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This rule makes minor changes in the standards regulating advanced air bags in light vehicles.

FR Vol. 68, No. 21, P. 4961–4965

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This change reduces the percentage of vehicles that must comply with the first deadline for advanced air bags under the rule originally published in May 2000.

FR Vol. 68, No. 26, P. 6359–6360

(Federal motor vehicle safety standards; school bus body joint strength; correcting amendment.)

This document corrects a typographical error in the amendment to Standard No. 221, school bus body joint strength, published in the Federal Register on December 13, 2001.

FR Vol. 68, No. 77, P. 19752–19754

(Federal motor vehicle safety standards; bus emergency exits and window retention and release; final rule; delay of effective date.)

This document delays the effective date of the final rule that amended the federal motor vehicle safety standard on bus emergency exits and window retention and release published on April 19, 2002.

TRANSPORTATION DEPARTMENT[761](cont'd)

FR Vol. 68, No. 86, P. 23614–23617

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This final rule addresses the issue of how to treat limited line manufacturers during the course of the first phase-in for the standard requiring advance air bags in light vehicles.

FR Vol. 68, No. 89, P. 24664–24667

(Federal motor vehicle safety standards; child restraint anchorage systems; final rule; interim final rule.)

This document amends the federal motor vehicle safety standards on child restraint anchorage systems to reflect an extension of the date by which final-stage manufacturers and alterers were required to install tether anchorages in vehicles subject to the standard, and temporarily excludes funeral coaches.

FR Vol. 68, No. 112, P. 34838–34842

(Federal motor vehicle safety standards; occupant crash protection; correcting amendment.)

This rule corrects errors in Figures 6a, 6b, 7, 8, and 9 of Standard No. 208, occupant crash protection.

FR Vol. 68, No. 121, P. 37619

(Federal motor vehicle safety standards; child restraint systems; final rule.)

This document makes a number of revisions to the federal safety standard for child restraint systems, including amendments for incorporating improved test dummies and updated procedures used to test child restraints.

FR Vol. 68, No. 123, P. 37981–37983

(Tire safety information; final rule; correcting amendments.)

This document contains corrections to the final rule published on November 18, 2002, (67 FR 69600) that established a new safety standard to improve the information readily available to consumers regarding tires.

FR Vol. 68, No. 123, P. 38115

(Federal motor vehicle safety standards; tires; final rule.)

This rule establishes new and more stringent tire performance requirements that will apply to all new tires for use on light vehicles, i.e., those vehicles with a gross vehicle weight ratio of 10,000 pounds or less, except motorcycles and low-speed vehicles.

FR Vol. 68, No. 124, P. 38208–38231

(Federal motor vehicle safety standards; child restraint systems; child restraint anchorage systems; final rule.)

This document clarifies the final rule establishing Standard No. 225, child restraint anchorage systems.

FR Vol. 68, No. 143, P. 43964–43972

(Federal motor vehicle safety standards; glazing materials; low speed vehicles; final rule.)

This rule updates the federal motor vehicle safety standard on glazing materials so that it incorporates by reference the 1996 version of the industry standard on motor vehicle glazing.

FR Vol. 68, No. 145, P. 44468–44473

(Federal motor vehicle safety standards; side impact protection; fuel system integrity; final rule.)

This rule updates the federal motor vehicle safety standards on side impact protection and fuel system integrity providing that radial tires of certain specifications, instead of bias-ply tires, be used on the moving barriers and also deletes certain outdated inaccurate specifications for the moving barriers in the fuel system integrity standard.

FR Vol. 68, No. 147, P. 44892–44901

(Federal motor vehicle safety standards; definition of multifunction school activity bus; final rule.)

This final rule establishes a new class of school buses, multifunction school activity buses, for use in transporting

children on trips other than the buses for use in transporting children between home and school.

FR Vol. 68, No. 154, P. 47485–47497

(Federal motor vehicle safety standards; heavy vehicle anti-lock brake system (ABS) performance requirement; final rule.)

This final rule extends application of the braking-in-a-curve dynamic performance test requirement to single-unit trucks and buses that are required to be equipped with ABS.

FR Vol. 68, No. 157, P. 48572

(Federal motor vehicle safety standards; correction.)

This action removes duplicate text published in the October 1, 2002, Code of Federal Regulations.

FR Vol. 68, No. 161, P. 50077–50079

(Federal motor vehicle safety standards; occupant crash protection; correcting amendment.)

This rule corrects an error in the figure for the removable dash label.

FR Vol. 68, No. 167, P. 51706–51711

(Federal motor vehicle safety standards; head impact protection; interim final rule.)

This interim final rule delays the date on which manufacturers of vehicles built in two or more stages must produce vehicles meeting the upper interior head protection performance requirement of Standard No. 201.

FR Vol. 68, No. 182, P. 54861

(Federal motor vehicle safety standards; child restraint systems; child restraint anchorage systems phase-in reporting requirement; correction; final rule.)

This document contains a correction to the final rule (Docket NHTSA-03-15438) that was published on June 27, 2003. The rule responded to petitions for reconsideration of final rules pertaining to Standard No. 225, child restraint anchorage systems.

FR Vol. 68, No. 187, P. 55544–55545

(Federal motor vehicle safety standards; glazing materials; low speed vehicles; final rule.)

This document delays the effective date of, and makes a correcting amendment to, the final rule published on July 25, 2003, (6 FR 43964) that updates the federal motor vehicle safety standard on glazing materials.

FR Vol. 68, No. 223, P. 65179–65201

(Federal motor vehicle safety standards; occupant crash protection; final rule.)

This document addresses detailed seat and dummy positioning procedures related to the May 2000 advanced air bag rule.

FR Vol. 68, No. 224, P. 65404–65409

(Federal motor vehicle safety standards; tire pressure monitoring systems; controls and displays; amendment in response to court decision; final rule; notice of manufacturer responsibilities and agency plans.)

This document simply revises the Code of Federal Regulations to conform to a court decision, vacating a federal motor vehicle safety standard for tire pressure monitoring systems.

FR Vol. 68, No. 229, P. 66741–66743

(Federal motor vehicle safety standards; child restraint systems; delay of expiration date of interim final rule.)

This document delays the expiration date of the interim final rule published on October 22, 2002, that amended the federal motor vehicle safety standard on child restraint systems to permit the manufacture and sale of harnesses that attach to school bus seat backs.

FR Vol. 68, No. 230, P. 67068–67086

TRANSPORTATION DEPARTMENT[761](cont'd)

(Federal motor vehicle safety standards; fuel systems integrity; final rule.)

This rule modifies the rear impact test in the federal motor vehicle safety standard on fuel system integrity.

These rules do not provide for waivers. Issuing waivers would be inappropriate for safety-related rules of this matter.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective July 28, 2004.
Rule-making actions:

ITEM 1. Amend subrule 911.1(2) as follows:

911.1(2) Information. Information and forms may be obtained from the Department of Transportation, Office of Public Transit, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-4708 239-1875.

ITEM 2. Amend rule 761—911.5(321) as follows:

761—911.5(321) Adoption of federal regulations.

911.5(1) Code of Federal Regulations. The department of transportation adopts the following portions of the October 1, 1999 2003, Code of Federal Regulations, which are referenced throughout this chapter:

- a. No change.
- b. No change.
- c. 49 CFR Part 653 655, Prevention of *Alcohol Misuse and Prohibited Drug Use in Transit Operations*.
- d. ~~49 CFR Part 654, Prevention of Alcohol Misuse in Transit Operations.~~

911.5(2) Obtaining copies of regulations. Copies of these regulations are available from the state law library or through the Internet at <http://www.dot.gov>.

ITEM 3. Amend subrule 911.6(1), introductory paragraph, as follows:

911.6(1) FTA drug and alcohol testing. Each driver is subject to the following testing for drug and alcohol usage as required by the Federal Transit Administration in 49 CFR Parts 653 and 654 Part 655, including:

ITEM 4. Amend subrule 911.6(6) as follows:

911.6(6) ~~School bus operator's permit~~ *Authorization to operate a school bus*. Each driver who transports students must have a ~~school bus operator's permit~~ *an authorization to operate a school bus* issued by the department of education in accordance with Iowa Code section 321.376.

ITEM 5. Amend subrule 911.8(1) as follows:

911.8(1) FTA drug and alcohol testing of mechanics. All personnel providing maintenance services on regional transit system vehicles are subject to drug and alcohol testing as required by the Federal Transit Administration in 49 CFR Parts 653 and 654 Part 655.

ITEM 6. Amend **761—Chapter 911**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 321.1, 321.189, 321.343, 321.376, 321.377 and 324A.1 and Iowa Code Supplement sections 321.1 and 321.377.

[Filed 6/2/04, effective 7/28/04]

[Published 6/23/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/23/04.

ARC 3441B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4 and 476.2 and 47 U.S.C. § 214(e), the Utilities Board (Board) gives notice that on May 24, 2004, the Board issued an order in Docket No. RMU-03-13, In re: Eligible Telecommunications Carrier Designation for Wireless Carriers, "Order Adopting Rules," by which the Board adopted new paragraph 39.2(5)"c" regarding the granting of eligible telecommunications carrier (ETC) status to wireless telecommunications carriers based on their certification from the Federal Communications Commission (FCC). This amendment is intended to redefine the term "service area" as it pertains to wireless telecommunications carriers and to increase the availability of wireless ETC status.

Notice of Intended Action was published in the IAB Vol. XXVI, No. 10 (9/17/03) p. 500, as **ARC 2773B**. Written comments were filed on or before November 10, 2003. A public hearing to receive oral comments on the proposed amendments was held on Wednesday, December 10, 2003.

Written comments were filed by the following nine parties: WWC License, LLC; U.S. Cellular Corporation; Midwest Wireless Iowa; Iowa Wireless Services; NPCR, Inc., d/b/a Nextel Partners; Qwest Corporation; Iowa Telecommunications Association; Rural Iowa Independent Telephone Association; and the Consumer Advocate Division of the Department of Justice. A summary of the comments filed and the amendments adopted can be found in the Board's order located on the Board's Web site, www.state.ia.us/iub, or hard copy in the Board's Record Center, 350 Maple Street, Des Moines, Iowa 50319. The Board determined based upon the comments that the proposed rule 39.5(476) should not be adopted. The Board adopted the other proposed amendment.

This amendment is intended to implement Iowa Code section 476.2 and 47 U.S.C. § 214(e).

This amendment will become effective July 28, 2004.

The following amendment is adopted.

Amend subrule **39.2(5)** by adding the following **new** paragraph "**c**":

c. In the case of a wireless telecommunications carrier, "service area" means that area where the wireless company has been licensed by the FCC to provide service.

(1) If the application of 39.2(5)"c" and the service requirement of 39.2(1) pose an undue hardship on a wireless telecommunications carrier seeking designation as an eligible telecommunications carrier, a wireless carrier may request a waiver of 39.2(1), pursuant to 199—1.3(17A,474,476,78GA,HF2206).

(2) Requests by a wireless telecommunications carrier for a waiver of 39.2(1) must state, in addition to the requirements established in 199—1.3(17A,474,476,78GA,HF2206), the extent of the area in which the carrier is licensed by the FCC to provide service, the extent of the area in which the carrier is seeking designation, and the carrier's ability to expand universal service fund-supported services throughout its licensed service area within a reasonable time frame. A request for a waiver under 39.2(5)"c" must also include a state-

UTILITIES DIVISION[199](cont'd)

ment that, should a wireless carrier receive a request from a potential customer within its service area but outside its existing network coverage, the wireless carrier will take a number of steps to provide service to that customer which may include modification or replacement of the requesting customer's equipment, deployment or installation of a roof-mounted antenna or other equipment necessary to provide service, cell tower adjustments, network or customer facility adjustments,

an offer of resold services from another carrier's facilities to provide service, or the employment or construction of an additional cell site, cell extender or repeater.

[Filed 6/4/04, effective 7/28/04]

[Published 6/23/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/23/04.

AGENCY	RULE	DELAY
Professional Licensure Division[645]	326.1, "remote medical site," 327.1(1), 327.1(1)"e," "g," and "k," 327.1(2)"d"(2) and (3), 327.3(1) to 327.3(3), 327.4, 327.6(1)"f," 327.6(2)	Effective date of June 16, 2004, delayed 70 days by the Administrative Rules Review Committee at its meeting held June 7, 2004. [Pursuant to §17A.4(6)]
	[IAB 5/12/04, ARC 3345B]	

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